



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.175 OF 2025

DR. VIJAY MADHUKAR KESARI

VERSUS

SAGAR MADHUKAR GUNJAL

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Advocate for Applicant : Mr. Dixit Sushant V.  
Advocate for Respondent : Mr. Ajit Manohar Gholap.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 10.12.2025

**FINAL ORDER :-**

1. Heard both sides.
2. The civil revision application is directed against order dated 03.05.2025 passed below Exh.88 in Regular Civil Suit No.296 of 2018 rejecting application preferred by the present applicant/defendant under Order VII Rule 11 of CPC. The respondent is original plaintiff who has filed Regular Civil Suit No.296 of 2018 for declaration and mandatory injunction.
3. The controversy involved in the suit is that applicant is the owner of the suit property which is in possession of respondent who is carrying his profession being practicing lawyer. The property was let out to respondent's father who was also lawyer for running his office. His father died on

04.03.2015 and respondent continued the profession. The applicant refused to recognize respondent as tenant. There is exchange of notices between them. The respondent even sent rent through cheque but it was refused. Hence, a declaration is solicited in the suit that he be declared as a tenant and applicant be directed to accept the rent.

4. Applicant contested the suit by filing written statement.

5. The applicant submitted application Exh.88 under Order VII Rule 11 for rejection of plaint on the ground that suit is barred by law, there was no cause of action and it is barred by limitation also. Respondent contested application. By impugned order, the application was rejected.

6. Learned counsel Mr. Dixit submits that considering the definition of Section 7(9) of the Maharashtra Rent Control Act, 1999 and as compared to Section 5(8) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, profession cannot be treated to be purpose of tenancy and such a suit is not maintainable. It is further submitted that under the new Act, no tenancy can be created for the profession. There is unholy intention of the respondent to get himself declared as a tenant under the new Act. It is submitted that there is no cause of action and whatever is shown is illusory.

7. He would further submit that the applicant's father died on 04.03.2015 which is a point from which the limitation reckoned but the suit is filed on 21.06.2018, beyond three years and it is liable to be rejected. The learned counsel has strenuously taken me through various provisions of old Act and new Act as well as the previous litigation reached up to High Court between the parties.

8. Learned counsel Mr. Gholap has repelled the submissions contending that the suit for declaration has been filed under Section 34 of Specific Relief Act. It is regulated by Section 9 of CPC which is maintainable. It is further submitted that the plea of limitation has not been specifically taken in application Exh.88. It is further contended that cause of action is specifically stated in the plaint. It is submitted that already the preliminary issue regarding jurisdiction of the Court has been framed and it is open to be dealt with by the Trial Court.

9. It reveals from record that Trial Court framed preliminary issue regarding jurisdiction of the Civil Court to try and entertain the present suit. It was decided in favour of the respondent holding that Civil Court has such a jurisdiction. Being aggrieved Writ Petition No.4198 of 2024 was preferred. By speaking order dated 17.02.2025, the Co-ordinate Bench

dismissed the petition. However, it was kept open for the Trial Court to decide the issue regarding the jurisdiction at the time of final decision of the suit. The selfsame arguments which are advanced by the parties have already been dealt with relegating the parties to address the Trial Court after full-fledged trial.

10. Learned counsel Mr. Dixit has virtually made the identical arguments referring to the provisions of old Act as well as New Act to buttress that the premises let out for profession is not covered by new Act and there cannot be a tenancy for that purpose. The tenor of his application Exh.88 filed for the rejection of the plaint is also on the same line. Once a Co-ordinate Bench has directed the Trial Court to decide the issue at the time of final conclusion it is impermissible for the applicant to raise the issue repetitively.

11. The meaningful reading of the plaint discloses cause of action. Applicant is unable to point out as to how the plaint is outcome of clever drafting and illusory cause of action. The ground of limitation has not been taken specifically in the application. Apparently death of the father of the respondent on 04.03.2015 cannot be said to be starting point of limitation for preferring suit under Section 34 of Specific Relief Act.

12. learned counsel for the respondent is right in contending that suit is filed under Section 34 for declaration and such a suit is entertainable by the Civil Court under Section 9 of CPC. No particular provision has pointed out from Maharashtra Rent Control Act, 1999 by counsel for the applicant which creates bar or prohibition in entertaining such a suit filed by the tenant. I do not find any express or implied bar in any of the provisions.

13. No perversity or illegality is noticed in the impugned order. I am constraint to observe that filing application like Exh.88 is an abuse of process of law. There is no substance in the revision.

14. Civil Revision Application is dismissed.

**(SHAILESH P. BRAHME, J.)**

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vmk/-