

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL REVISION APPLICATION NO.172 OF 2020

1. Chandrakant Vishnu Babar
(Since deceased through LRs)
- 1a. Kiran Chandrakant Babar
Age. 55, Occu. Agriculture,
- 1b. Sunil Chandrakant Babar
Age. 42, Occu. Agriculture,
- 1c. Jeevan Chandrakant Babar
Age. 48, Occu. Agriculture,
- 1d. Shantabai Chandrakant Babar
Age. 75, Occu. Household,
All R/o. Yashwantnagar, Salshing Road,
Vita Taluka Khanapur, District-Sangli. ..Applicants

Versus

1. Tukaram Jijaba Jagtap
(Since deceased through LRs)
- 1a. Popat Tukaram Jagtap
Age. 72, Occu. Agriculture,
- 1b. Annaso Tukaram Jagtap
Age. 70, Occu. Agriculture...
- 1c. Bapurao Tukaram Jagtap
Age. 65, Occu. Agriculture,..
- 1d. Abasaheb Tukaram Jagtap
Age. 60, Occu. Agriculture,,
All R/o Bhagyanagar,
Tal. Khanapur, Dist. Sangli
- 1e. Anusaya Shankar Jadhav
Age. 75, Occu. Agriculture,,
R/o Vitanagar, Mayani Road,
Tal.Khanapur, Dist. Sangli

1f. Hirabai Sukhdev Jadhav
Age. 55, Occu, Agriculture,,
R/o Salshinge, Tal. Khanapur,
Dist. Sangli

..Respondents

...

Mr. Umesh Mankapure a/w Ms. Sigal Magdum and Mr. Parth Pitambare, Advocates for Applicants.

Mr. Abhishek T. Ingale a/w Mr. Tajpal S. Ingale, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 04th SEPTEMBER, 2025.

PRONOUNCED ON : 17th SEPTEMBER, 2025.

JUDGMENT:-

1. The applicants (original defendants) take exception to order dated 31.12.2019 passed by learned District Judge-1, Sangli in Regular Civil Appeal No.125/2006, thereby reversing judgment and decree dated 17.03.2006 passed by learned Civil Judge Junior Division Vita in Regular Civil Suit No.450/1998, thereby dismissing suit of respondents seeking recovery of possession of rented premises alongwith arrears of rent and compensation.

2. The dispute pertains to premises consisting of two rooms admeasuring 10 X 10 feet each, which is part of Municipal House No.2172 situated at Vita. Since 1989 Late Chandrakant was tenant in suit property on monthly rent of Rs.150/-. On 29.09.1998, respondent-landlord issued eviction notice to tenant demanding arrears of rent and terminating tenancy. Since tenant failed to reply eviction

notice, landlord instituted Regular Civil Suit No.450/1998 seeking eviction of tenant on following grounds:

- (i) Acquisition of suitable alternate accommodation [Section 13(1)(i)] of Bombay Rent Act (for the sake of brevity hereinafter referred as 'the Act').
- (ii) Erection of permanent structure without written consent of landlord [Section 13(1)(b) of the Act].
- (iii) Change/Conversion of residential use to commercial tailoring shop i.e. change of user [Section 13(1)(k) of the Act].
- (iv) Default in payment of agreed rent for more than six months [12(3)(a) of the Act].
- (v) Bonafide and personal requirement of landlord [Section 13(1)(g) of the Act]

3. The tenant refuted landlord's claim by filing written statement. Eventually, Trial Court framed issues at Exhibit-26. The landlord relied upon evidence of Power of Attorney Holder i.e. his son namely Popat Tukaram Jagtap a witness and Mr. Nanasaheb Jagtap, whereas tenant relied upon his own evidence and evidence of Mr. Ravindra Murlidhar Takale. The learned Trial Court after hearing parties, dismissed suit vide judgment and order dated 14.03.2006.

4. Aggrieved landlord filed Regular Civil Appeal No.125/2006 before District Judge at Sangli, who pleased to allow Appeal and passed decree of eviction under Sections 12(3)(a), 13(1)(i), 13(1)(b)

of the Act, thereby reversing findings recorded by Trial Court on aforesaid issues. Aggrieved tenant filed present Civil Revision Application.

5. Mr. Umesh Mankapure, learned Advocate appearing for applicants vehemently submits that Appellate Court committed patent error while reversing well reasoned findings recorded by Trial Court on all issues. According to him, case of landlord is not at all established, more particularly when landlord relied upon evidence of Power of Attorney Holder, who does not have personal knowledge as regards to tenancy. His evidence could not have been accepted on crucial aspects involved in matter. He would submits that although tenant appeared in suit on 01.01.1999, Advocate engaged by him canceled his Vakalatnama on 28.06.2000. Thereafter, tenant engaged another Advocate on 01.08.2000 and immediately filed application Exhibit-22 seeking permission to deposit rent of Rs.7770/-. The application was allowed on 21.08.2000. In deference to permission granted by Court, tenant deposited rent amount on 11.10.2000. As such, Trial Court had rightly concluded that landlord failed to make out case of default. Similarly, construction of bathroom, which was necessary for useful enjoyment of property could not have been considered as change or erection of permanent structure. He endeavours to point out from evidence that construction is made abutting to rented premises and cannot be construed as erection of permanent structure in rented

premises. He would further submit that construction can be removed without damaging to suit premises, which consist of two small rooms. He would further submit that son of tenant has raised construction out of his own income. Therefore, findings recorded by Appellate Court that tenant has acquired alternate accommodation is perverse. He would urge that Appellate Court committed patent error while reversing well reasoned findings recorded by Trial Court. Eventually, passed decree of eviction against tenant.

6. Per contra, Mr. Abhishek Ingale, learned Advocate appearing for respondents would support judgment and decree passed by Appellate Court. He would point out that tenant committed serious default within meaning of Sub-section 3(a) of Section 12 and tenant cannot claim immunity from eviction merely by tendering arrears of rent after expiry of one month from service of notice under Sub-section (2). He would point out that tenant failed to raise valid dispute as to standard rent or permitted increase by filing application for fixation of standard rent under Section 11(3) within 30 days of receipt of demand notice. Now, he cannot escape from eviction under Section 12(3)(a) of the Act. He would further submit that admittedly, tenant has raised construction of bathroom using bricks without written consent from landlord. Such construction is covered by Section 13(1)(b) of the Act. He would submit that considering nature of construction it cannot be disputed that it is of permanent nature. He would further submit that

tenant owned a plot on which construction of four rooms block has been raised and his son is residing in said premises. Evidently, tenant has acquired suitable alternate accommodation. The Appellate Court has rightly dealt with all aforesaid aspects. In support of his contentions he relies upon observations of this Court in cases of *Hemant Bharat Kachare Vs. Vasu Anna Shetty and Others*¹, *Sudhir Kumar Sengupta Vs. Kusum Pandurang Ken*² and *Rajendra Gangadhar Patil Vs. Bhanuprakash Bherumal Khandelwal and Others*³.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that although respondent-landlord had initiated proceeding of eviction on five counts, ground of bonafide and personal requirement was not pressed into service. The Appellate Court has ultimately passed decree of eviction on the ground of default, acquisition of alternate suitable accommodation and erection of permanent structure without written consent of landlord. The Trial Court had rejected claim of eviction on aforesaid grounds. However, Appellate Court reversed decree upholding contentions of landlord.

8. The first ground of eviction is default in payment of rent for the period from 01.07.1994 to 31.07.1998. The Trial Court was of the view that after filing of suit, defendant sent money by post, but landlord refused all money orders. Hence, contentions of plaintiff that

¹ (2024) 6 AIR Bom R 605.

² 2024 SCC OnLine Bom 3077.

³ 2025 SCC OnLine Bom 2917.

defendant was not ready and willing to pay rent of suit premises cannot be accepted. It is also observed that although defendant has not deposited any sum on first day of his appearance, landlord failed to make out case that defendant committed default in payment of rent for the period from 01.07.1994 to 31.07.1998 or even failed to prove that rent was fixed @ Rs.150/- per month as claimed. Thus plaintiff failed to discharge his burden under Section 101 of Evidence Act.

9. Per contra learned Appellate Court observed that defendant had not paid arrears of rent claimed by plaintiff within one month from the date of notice dated 29.09.1998, so also failed to tender or deposit arrears of agreed rent till October 1998. The Appellate Court further observed that defendant appeared in suit on 01.01.1999 in pursuance to suit summons. However, failed to deposit amount of arrears of rent under protest or even failed to file application for fixation of standard rent. As such, defendant committed default in terms of Section 12(3) (a) of the Act, so also failed to comply provisions of Section 12(3)(b) of the Act.

10. It is true that, tenant disputed amount of monthly rent. However, did not file any application disputing amount of standard rent or permitted increase. In such a case, it is expected of tenant to file an application for fixation of standard rent under Section 11(3) within a period of 30 days from the date of the demand notice. In present case, there is clear failure on the part of tenant to make such application.

The evidence on record shows that although tenant was served with a notice dated 29.09.1998, he failed to tender arrears of rent even @ Rs.60/- per month, as admitted by him. Even after service of suit summons on 24.11.1998, he failed to tender arrears of rent in terms of provisions of Section 12(3)(b) of the Act. In such circumstances, if tenant has failed to comply condition of Sub-section (3)(a) of Section 12, tenant cannot claim protection from eviction.

11. Admittedly, tenant tendered an application for deposit of rent after one and half year of his appearance and arrears of rent has been deposited after Trial Court allowed belated application. Therefore, deposit of rent or tendering of rent after one and half year would not aid tenant to secure protection from eviction in terms of Sub-section (3)(b) of Section 12 of the Act. Although it is argued on behalf of tenant that Trial Court allowed application under Exhibit-22 and permitted tenant to deposit Rs.7,770/- in Court vide order dated 21.08.2000, this Court cannot approve aforesaid order or deposit of amount as compliance of statutory requirement under Section 12(3)(a) or (b) of the Act. This Court in case of ***Chaganlal Mulchand Jain Vs. Narayan Jagannath Bangh***⁴ has observed that question of standard rent cannot be gone into unless tenant makes an application for that purpose within one month from receipt of notice. Even in case of ***Jaywant S. Kulkarni and others Vs. Minochar Dosabhai Shroff and***

⁴ 1983 Mh.L.J. 254.

*others*⁵, similar observations are made by Supreme Court of India.

Further this Court in case of ***Sudhir Kumar Sengupta*** (supra) observed in paragraph no.27 as under:

“Considering the overall conspectus of the case, I am of the view that the ground of default in payment of rent under Section 12(3)(a) of the Bombay Rent Act is clearly established in the present case. The Trial Court has clearly erred in going into the issue of readiness or willingness on the part of the Defendant to pay the rent and permitted increases. Section 12(3)(a) did not leave any discretion for the Trial Court to go into the issue of readiness and willingness to pay rent since there was no dispute about amount of rent nor Defendant file application for fixation of standard rent within notice period. The statutory scheme of Section 12(3)(a) is such that immediately upon noticing the non-payment of arrears of rent and permitted increases to the landlord within the statutory notice period provided under Section 12(2), the eviction decree becomes imminent.”

12. In my considered view, Appellate Court has rightly appreciated legal and factual position while upholding landlord's claim on the point of default of tenant and passed eviction decree on ground of default in terms of Section 12(3)(a) of the Act.

13. Second ground for eviction is under Section 13(1)(b) of the Act on contention that tenant has erected permanent structure without written consent of landlord. The learned Trial Court observed that construction of bathroom can be removed without much trouble and expenses and without any damage to suit property. Further new bathroom erected on courtyard without strong foundation is for necessary and convenient use of suit premises, which does not amount to permanent structure for invoking provisions of Section 13(1)(b) of

⁵ 1988 Mh.L.J. 828.

the Act. The Appellate Court, however, reversed findings observing that admittedly, tenant has made construction of bathroom with aid of bricks and cement with roof thereon without permission from landlord, thus it pass test of permanent structure made without written consent of landlord. The pleading of defendant shows that he had denied construction of bathroom. However, during cross-examination, suggestion given to plaintiff's witness depicts admitted fact regarding construction of bathroom adjacent to open space of tenanted premises. The defendant in his cross-examination also admitted construction of bathroom near door of rented premises using bricks and cement. In case of *Purushottam Das Bangur and others Vs. Dayanand Gupta*⁶, Supreme Court has laid down test for determining permanent nature of structure for directing eviction under Rent Control Legislation. In paragraph no.20 it is observed that while determining permanent or temporary nature of structure, Court must apply various tests, which are as under:

- (i) use of material for erecting structure;
- (ii) degree of annexation;
- (iii) removability of structure without causing any damage to building;
- (iv) durability of structure;
- (v) intention of parties, who put up structure and
- (vi) parties for which structure intends to be used.

⁶ (2012) 10 SCC 409.

14. In present case, admittedly, structure is made of bricks and cement, which is sufficient to hold that it was permanent structure. Similarly, being a bathroom, construction would last forever. Therefore, structure can be regarded as permanent in nature and is likely to last for several years. The structure is constructed abutting to rented premises in courtyard especially occupying additional space for use. All aforesaid circumstances are sufficient to hold that there is sufficient material to direct eviction of tenant under Section 13(1)(b) of the Act.

15. Third ground of eviction is acquisition of suitable alternate accommodation under Section 13(1)(i) of the Act. The Trial Court while rejecting aforesaid ground observed that house in question is standing in the name of defendant's son. The plaintiff's witness did not state that it has been acquired by defendant out of his own income and defendant's visits to residence at interval would not tantamount to acquisition of sufficient alternate accommodation. However, Appellate Court while dealing with aforesaid issue observed that plot in question was purchased by defendant in name of his son. The construction of house commenced in year 1992. The purchase of plot is in year 1989-90. On the basis of admission of defendant's witness, learned Appellate Court has rightly observed that in year 1990, age of defendant's son was hardly 17 years. This clearly shows that defendant has invested his own funds for purchase and construction of bungalow

admeasuring 700 sq. ft.. The Appellate Court is, therefore, justified in holding that property is owned by tenant. The Appellate Court observed that there is nothing on record to show that there was partition between defendant and his son. The learned Appellate Court has further made reference to pleading and recorded that defendant has not specifically pleaded that his son is separated from him and independently residing in bungalow.

16. In my opinion, observations made by learned Appellate Court are in tune with record. Although son of defendant is stated to be residing in bungalow, fact remains that in absence of any material indicating independent income of son and particularly looking to his age at the time of acquisition of property or construction of house, only inference possible is that same is acquired by defendant out of his own funds. In that view of the matter, this Court has no reason to interfere in findings of fact as recorded by Appellate Court, thereby upholding contentions of landlord as to acquisition of suitable alternate accommodation by tenant and consequential decree of eviction in terms of Section 13(1) (i) of the Act.

17. At this stage Mr. Mankapure, learned Advocate appearing for petitioners submits that landlord has instituted separate suit for eviction in the year 2015, which was later on withdrawn. The said suit was preceded by notice for eviction. As such, cause of action pleaded in present suit for institution of eviction suit does not survive. Since

fresh notice of termination of tenancy would lead to continuation of tenancy. As such, landlord would be estopped from continuing with present suit.

18. The learned Advocate appearing for respondents, however, submits that subsequent suit for eviction is not barred so long as it arises from different cause of action. He would, therefore, urge that merely because subsequent suit was filed by landlord that would not take away his right to continue with present suit instituted on different cause of action. The Supreme Court of India in case of *Aspi Jal and Another Vs. Khushroo rustom Dadyburjor*⁷ held that landlord is entitled to file different suits based on different cause of actions for one and the same ground of eviction. Similarly, in case of *Shridhar Dattatraya Karadkar Vs. Narayan Laxman Soparkar*⁸, Single Judge of this Court observed that there is no bar for institution of different suits based on fresh cause of actions. In such cases, principles of *res-judicata* would not apply. In this background, this Court holds that merely because landlord had filed subsequent suit based on independent causes of action, cause of action pleaded in present suit would not be affected. The subsequent suit or eviction notice cannot be treated as revival of tenancy terminated while institution of present suit.

19. So far as contentions of Mr. Mankapure that evidence of plaintiff's witness-Popat Tukaram Jagtap could not have been read for

⁷ (2013) 4 SCC 333.

⁸ 2017 (4) Mh.L.J. 712.

purpose of passing eviction decree against petitioners, submissions cannot be countenanced for the reasons that PW-1 is none other than son of landlord. He was aged about 50 years when he recorded his evidence. He was Power of Attorney Holder on behalf of his father, who has instituted proceeding for eviction. Although said witness has admitted that he was not aware about some of particulars of tenancy, it cannot be held that he is not aware about facts pleaded in plaint, since he is major family member and residing together alongwith his father. This Court, therefore, holds that Appellate Court was justified in accepting oral evidence of PW-1-Popat Tukaram Jagtap in capacity of Power of Attorney Holder for landlord.

20. In result, no case is made out to cause interfere under Section 115 of Code of Civil Procedure. Hence, Civil Revision Application stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE