

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5547 OF 1998**

Somnath Tukaram Kuber,
Adult, Resident of Kurundwadi,
Taluka Madha,
District Solapur.

..Petitioners

Versus

1. Meghraj Medappa Kadadi,
Deceased through legal heirs/representative
1-a Smt. Hemlata Meghraj Kadadi
Age: 70 years, Occ.: Household

1-b Sarita T.G.,
Age: 46 years, Occ.: Household,

Both residing at Ganga Niwas,
Opposite Kaliapur Maruti Mandir,
Railway Lines, Solapur.

2. Dharmraj Annaraj Kadadi
Age.: 56 years, Occ.: Business,
Res.: 147, Railway Line, Ganga Niwas,
Solapur.

...Respondents

Mr. Satish B. Borulkar, for the Petitioner.
Mr. Ajit V Alange, for the Respondent.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 24th JULY 2025

PRONOUNCED ON : 7th AUGUST 2025

JUDGMENT:

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN
RAMCHANDRA
SANKPAL
Date: 2025.08.07
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1. This Petition under Article 227 of the Constitution of India, calls in question the legality, propriety and correctness of a judgment and order dated 21st September 1998 passed by the learned District Judge , Solapur, in Civil Appeal No. 489 of 1994, whereby while dismissing the Appeal preferred by the Petitioner against a decree of eviction passed in RCS No. 204 of 1989 by the learned Civil Judge, Madha, Solapur, on the ground of default in payment of rent, the learned District Judge also passed the decree of eviction on the grounds of unauthorized erection of permanent structure, non-user of Suit premises for the purpose for which it was let and nuisance.

2. The background facts can be summarised as under:

2.1 The deceased Respondent No.1 had constructed a chawl “Kadadi Chawl” bearing Municipal House No.1, Kurduwadi, Madha. The Petitioner-Defendant was a tenant of Unit No. 56, comprising of two rooms. The tenancy was monthly. Rent was Rs. 7/- per month. The tenant was liable to pay Rs.3/- per month towards the permitted increase.

2.2 Asserting that the Defendant committed default in payment of rent and permitted increase, the Plaintiff addressed a statutory notice on 4th March 1989 and, thereby, professed to terminate the tenancy of the Defendant.

2.3 In the Plaint, it was asserted, *inter alia*, that the Suit premises was let for residential purpose. However, the Defendant had changed the user of the Suit premises by running a hotel therein. The Defendant had erected permanent structure in the front and rear portion of the Suit premises. On account of the hotel business, especially the furnace installed by the Defendant and the waste, the user of the premises was causing nuisance and annoyance to the neighbouring occupiers.

2.3 The Defendant resisted the Suit by filing Written Statement.

2.4 The jural relationship was not put in contest. It was, however, denied that the Defendant was in arrears of rent. According to the Defendant, agreed rent was Rs.10/- and the Defendant had been regularly paying the agreed rent. It was denied that the Defendant had changed the user of the premises, erected permanent structure and the use of the premises was causing nuisance or annoyance to the adjoining occupants.

2.5 The learned Civil Judge settled the issues. At the trial, Mr. G.S. Patil, (PW-1), the constituted attorney of the Plaintiff entered into witness-box. In the rebuttal the Defendant examined himself and a witness-D.R. Raut (DW2). The parties also tendered the documents for the perusal of the Court.

2.6 After appraisal of the evidence and the material on record, the learned Civil Judge was persuaded to hold that the Defendant incurred the forfeiture of tenancy on account of default in payment of rent as the Defendant failed to establish that, within one month from the date of service of notice, the Defendant had tendered rent and permitted increase to the Plaintiff, and the tender of the amount by the Money order after the institution of the Suit and the first date of hearing was of no avail to the Defendant. Moreover, no effort was made by the Defendant to deposit the rent and permitted increase along with interest and costs before the Trial Court prior to the first date of hearing. Resultantly, the Defendant was not entitled to relief against forfeiture.

2.7 The learned Civil Judge, however, held that though there was material to show that permanent structures existed in the front and rear portion of the Suit premises, yet, the Plaintiff failed to establish as to when the said permanent structures were erected by the Defendant and also failed to establish that the Suit premises was let for the purpose of residence and the Defendant changed the user of the premises. The ground of nuisance was also answered in the negative.

2.8 Being aggrieved by the decree of eviction on the ground of default in payment of rent, the Defendant filed Appeal before the District Court, Solapur.

2.9 The learned District Judge, Solapur, found no fault with the findings recorded by the Trial Court on the count of default in payment of rent and the consequential forfeiture of tenancy. However, the learned District Judge was of the view that despite sufficient evidence to demonstrate that the Defendant had erected permanent structure without the written consent of the landlord and was carrying on the business of hotel in the Suit premises and thereby changed the user thereof, and, resultantly, caused nuisance to the adjoining occupants, the Trial Court committed an error in declining to pass the decree on the said grounds as well. Thus, the District Judge passed decree of eviction on rest of the grounds also.

3. Being aggrieved, the Defendant invoked the writ jurisdiction.

4. By an order dated 2nd February 1999, this Court issued Rule, stayed the execution and operation of the decree upon the condition of payment of rent and usual undertaking.

5. I have heard Mr. Satish Borulkar, the learned Counsel for the Petitioner, and Mr. Ajit V Alange, learned Counsel for the Respondent, at some length. With the assistance of the learned Counsel for the parties,

I have perused the material on record including the pleadings and the depositions of witnesses.

6. Mr. Borulkar, the learned Counsel for the Petitioner, advanced a two-fold submission. Firstly, According to Mr. Borulkar, the Trial Court was clearly in error in returning a finding that the Defendant committed default in payment of rent and permitted increase and thereby incurred forfeiture of tenancy. Emphasis was sought to be laid on the fact that the Defendant had tendered the outstanding rent and permitted increase by money order and the same was not accepted by the landlord. During the pendency of the Suit before the Trial Court, the Defendant had regularly deposited the rent as it had fallen due. The Trial Court thus could not have passed a decree of eviction on the ground of default in payment of rent for the reason that there was some delay in depositing the rent before the Trial Court during the pendency of the Suit.

7. Under no circumstances, could it be urged that the Defendant was not ready and willing to pay the rent. Consequently the case would be covered by Section 12(1) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (“the Bombay Rent Act 1947”). submitted Mr. Borulkar.

8. Secondly, Mr. Borulkar would submit that, the District Court committed a manifest error in law in setting aside the findings of the

Trial Court on the other grounds of eviction without a cross-objection having been filed on behalf of the Plaintiff-landlord. In the circumstances of the case, where the Trial Court had returned negative findings on the other grounds, it was not open for the Appellate Court to reverse those findings without cross-objections.

9. Mr. Borulkar further submitted that, even otherwise, the findings recorded by the District Court on the grounds of erection of permanent structure, change of user of the Suit premises and nuisance are not borne out by the evidence on record. Mr. G.S. Patil, (PW-1) had no knowledge about the erection of the permanent structure and the alleged change of user. In the absence thereof, the findings recorded by the learned District Judge were clearly sans evidence. Thus, the impugned judgment and decree deserves to be quashed and set aside.

10. In contrast to this, Mr. Alange, the learned Counsel for the Respondent, would submit that, indisputably, the Defendant neither paid the amount within the statutory period, after service of notice, nor deposited the rent along with interest and costs before the first date of hearing. Nor the Defendant had filed any proceeding for fixing the standard rent. Consequently, the default on the part of the Defendant to comply with the conditions stipulated under Section 12(3) of the Act 1947, so as to avoid forfeiture of tenancy, was writ large. Therefore, there is no escape from the consequences that entailed the failure to

comply with the statutory requirements by the tenant, submitted Mr. Alange.

11. Mr. Alange further submitted that, the learned District Judge was well within his rights in granting a decree for eviction on other grounds, which were duly proved. It is not the requirement of law that the Respondent must file Cross Objection when the decree is wholly in favour of the Respondent. Even without filing the Cross Objection, the Respondent can urge that the finding on particular issues ought to have been rendered in favour of the Respondents.

12. Taking the Court through the provisions contained in Order 41 Rule 22 of the Code, Mr. Alange submitted that the Respondent-Plaintiff was entitled in law to assail the correctness of the findings of the trial Court on rest of the grounds without filing Cross Objection. To buttress this submission, Mr. Alange placed reliance on a judgment of the Supreme Court in the case of **Saurav Jain and Anr. V/s. A.B.P. Design and Anr.**¹

13. As regards the merits of the findings in the impugned order, Mr. Alange would urge, there was ample evidence to return findings on the erection of permanent construction without the permission of the landlord, change of user of the suit premises and the resultant nuisance caused to the adjoining inhabitants. The Trial Court despite finding that the suit premises was being put to the use of running a hotel and

1 (2022) 18 SCC 633

permanent structures did exist in the front and rear portion of the suit premises, dithered from passing the decree on the said grounds. Thus, the learned District Judge was justified in correcting the error committed by the trial Court. Therefore, in any view of the matter, no interference is warranted in the impugned order, submitted Mr. Alange.

14. The aforesaid submissions now fall for consideration.

15. To begin with, the ground of default in payment of rent; on which the finding of the trial Court was affirmed by the learned District Judge. Few facts, in this context, appear incontrovertible. Statutory notice was addressed on 4 March 1989. It was served on the Defendant on 6 March 1989. The Defendant had tendered the amount towards the due rent, in the contemplation of the Defendant, on 16 February 1990. The suit was instituted much prior thereto.

16. It is, thus, abundantly clear that the Defendant had not tendered the rent and increased taxes demanded by the Plaintiff within one month of the service of the due notice. Neither the Defendant contested the standard rent by filing an application for fixation of standard rent and permitted increases of the suit premises within one month of the service of the said notice. Nor the record indicated that the Defendant had deposited the rent and permitted increases along with the interest and costs, as envisaged by sub-Section (3) of Section 12 of the Rent Act, 1947, before the first date of hearing. Evidently, the issues were settled

on 27 November 1990. A belated effort was made by the Defendant to avail relief against the forfeiture by filing an application on 27 January 1994.

17. In the backdrop of the aforesaid uncontroverted facts, the trial Court and the learned District Judge were wholly justified in returning a finding that the default in payment of rent, coupled with the non-compliance of the provisions contained in Section 12 of the Act, 1947, entailed the consequence of forfeiture of the tenancy. In the light of the aforesaid objective and hard facts, which emerged from the material on record, no other inference is plausible.

18. Mr. Borulkar, learned Counsel for the Petitioner, attempted to salvage the position by canvassing a submission that the refusal to accept the Money Order sent by the Defendant and the regularity with which the Defendant had deposited the rent before the trial Court, underscore the fact that the Defendant was ready and willing to pay the amount of standard rate and permitted increases, and, therefore, the case would fall within the ambit of sub-section (1) of Section 12 of the Rent Act, 1947.

19. I find it rather difficult to accede to this submission. As noted above, no dispute about the standard rent and permitted increases was raised by the Defendant in the manner envisaged by Section 12 of the

Act, 1947. Nor the rent was tendered within one month of the service of the demand notice.

20. So far as the default in payment of rent during the pendency of the Suit, the learned Civil Judge was of the view that the Defendant was irregular in payment of rent, as there was often delay of a couple of months in the deposit of the rent of a particular month, and, therefore, the Defendant was not entitled to seek relief against forfeiture. It could be urged that, the tenant is not expected to deposit the rent, as it falls due, with mathematical precision. However, this aspect of the matter, pales in significance as the decree for eviction can be sustained on account of the non-compliance of the other statutory requirements. Therefore, I am impelled to hold that the learned Civil Judge as well as the learned District Judge were justified in passing a decree for eviction on account of the clear default in payment of rent and compliance with the conditions to avail the relief against the forfeiture.

21. This leads me to the second limb of the submission of Mr. Borulkar that the learned District Judge, could not have reversed the negative findings of the Trial Court on the rest of the grounds of eviction in the absence of cross-objections. This submission deserves to be appreciated in the light of the legislative change brought about by the Civil Procedure Code Amendment (Act 104 of 1976). Under the said Amendment Act, Rule 22 of Order 41 of the Code, suffered a

significant amendment. The expression, “may not only support the decree *but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may* also take any cross-objection to the decree” came to be substituted for the expression, “may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree”.

22. The portion which is emphasised above (in italics) marks a significant departure from the unamended provision, in two ways. Firstly, the scope of filing of a cross-objection stood enlarged to include objections against, “finding of the lower Court”. Secondly, it permitted the Respondent to assail the findings of the lower Court without filing a cross-objection, by employing the phrase, “but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour”. The two parts of the expression introduced by the amendment are required to be construed disjunctively as they are supported by a semi colon.

23. In the case of **Banarsi And Ors Vs Ram Phal**,² the Supreme Court considered the import of the 1976 Amendment and postulated the three situations which may arise where the Respondent professes to assail the finding and decree of the Court of the first instance. The observations of

2 AIR 2003 SC 1989.

the Supreme Court in paragraphs 10 and 11 are instructive and hence extracted below.

“10. CPC Amendment of 1976 has not materially or substantially altered the law except for a marginal difference. Even under the amended Order 41 Rule 22 sub-rule (1) a party in whose favour the decree stands in its entirety is neither entitled nor obliged to prefer any cross objection. However, the insertion made in the text of sub-rule (1) makes it permissible to file a cross objection against a finding. The difference which has resulted we will shortly state. A respondent may defend himself without filing any cross objection to the extent to which decree is in his favour; however, if he proposes to attack any part of the decree he must take cross objection. The amendment inserted by 1976 amendment is clarificatory and also enabling and this may be made precise by analysing the provision. There may be three situations:

- (i) The impugned decree is partly in favour of the appellant and partly in favour of the respondent;
- (ii) The decree is entirely in favour of the respondent though an issue has been decided against the respondent;

(iii) The decree is entirely in favour of the respondent and all the issues have also been answered in favour of the respondent but there is a finding in the judgment which goes against the respondent.

11. In the type of case (i) it was necessary for the respondent to file an appeal or take cross objection against that part of the decree which is against him if he seeks to get rid of the same though that part of the decree which is in his favour he is entitled to support without taking any cross objection. The law remains so post amendment too. In the type of cases (ii) and (iii) pre-amendment CPC did not entitle nor permit the respondent to take any cross objection as he was not the person aggrieved by the decree. Under the amended CPC, read in the light of the explanation, though it is still not necessary for the respondent to take any cross objection laying challenge to any finding adverse to him as the decree is entirely in his favour and he may support the decree without cross objection; the amendment made in the text of sub-rule (1), read with the explanation newly inserted, gives him a right to take cross objection to & finding recorded against him

either while answering an issue or while dealing with an issue.

24. The precise submission, sought to be forcefully canvassed by Mr. Borulkar that, without filing cross-objections, the Respondent cannot challenge a particular finding rendered by the Trial Court against him, when the decree is in his favour, was repelled by the Supreme Court in the case of **S. Nazeer Ahmed Vs State Bank of Mysore & Ors**³ in the following words:

“7. The High Court, in our view, was clearly in error in holding that the appellant not having filed a memorandum of cross-objections in terms of Order XLI Rule 22 of the Code, could not challenge the finding of the trial court that the suit was not barred by Order 2 Rule 2 of the Code. The respondent in an appeal is entitled to support the decree of the trial court even by challenging any of the findings that might have been rendered by the trial court against himself. For supporting the decree passed by the trial court, it is not necessary for a respondent in the appeal, to file a memorandum of cross- objections challenging a particular finding that is rendered by the trial court against him when the ultimate decree itself is in his favour. A memorandum of cross-objections is needed only if the respondent claims any relief which had been negatived to him by the trial court and in addition to what he has already been given by the decree under challenge. We have therefore no hesitation in accepting the submission of the learned counsel for the

3 AIR 2007 SC 989.

appellant that the High Court was in error in proceeding on the basis that the appellant not having filed a memorandum of cross-objections, was not entitled to canvass the correctness of the finding on the bar of Order 2 Rule 2 rendered by the trial court.” (emphasis supplied)

25. Following the aforesaid pronouncements, in the case of **Saurav Jain and Anr (Supra)**, on which reliance was placed by Mr. Alange, it was enunciated that only when a part of the decree was assailed by the Respondent, should a memorandum of cross-objection be filed. Otherwise, it is sufficient to raise a challenge to an adverse finding of Court of first instance before the Appellate Court without a cross-objection.

26. In the light of the aforesaid well-recognized position in law, the submission of Mr. Borulkar that the learned District Judge transgressed the jurisdictional limits in reversing the negative findings on the rest of the grounds of eviction of the Trial Court, does not carry any conviction. The learned District Judge was justified in entertaining the submissions on behalf of the Respondent-Plaintiff that the findings on those issues against the Plaintiff, rendered by Trial Court, ought to have been in favour of the Plaintiff.

27. To appraise whether the findings of the learned District Judge are sustainable, a brief recourse to the evidence is necessary.

28. The Defendant categorically deposed that he has been running a hotel in the Suit premises. It generates brisk business. In the front portion of the Suit premises a tin-shed has been erected on fixed iron angles. The said structure has been in existence since long.

29. On the basis of the aforesaid evidence and the report of the Court Commissioner, the Trial Court as well as the learned District Judge recorded concurrent findings of fact that the permanent structure was in existence in the front and rear portion of Suit premises.

30. In the face of aforesaid irresistible inference regarding existence of permanent structures, it would be relevant to note the circumstances which obtained when the tenancy commenced. Dagadu R Raut (DW2), conceded in the cross-examination that Pandharinath was the grandfather of the Defendant. Pandharinath was in the employment of the Plaintiff, and was a tenant in the Suit premises. Pandharinath was using the Suit premises for the purpose of residence. Hotel business was being run in the Suit premises since prior to 15 to 20 years.

31. The aforesaid evidence clearly demonstrates that the premises was initially let for the purpose of residence and was also being used for the purpose of residence. The learned Civil Judge despite recording a finding that permanent structure was erected and hotel was being run in the Suit premises negated the claim of the Plaintiff on those grounds on the premise that the Plaintiff held himself back and did not

disclose the time from which the user of the suit premises was changed, and when the permanent structure was erected. In this view of the matter, the learned District Judge was justified in holding that it was for the Defendant to show that the change of user was with the written consent of the landlord and when the permanent structure was erected. In the absence thereof, the learned District Judge was fully justified in holding that the grounds of change of user of the Suit premises and erection of permanent structure were also duly proved.

32. On the aspect of nuisance also, in the very nature of the things, when the adjoining tenements were being used for residential purpose, the running of the hotel with a furnace on the rear side and the resultant waste and din the brisk hotel business generated, caused annoyance to the ordinary comfort and enjoyment of the neighbouring premises by the occupants thereof. No fault could this be found with the finding of the learned District Judge on the ground of nuisance as well.

33. Resultantly, this Court does not find such infirmity in the impugned order as to interfere with the same in exercise of the supervisory jurisdiction.

34. Resultantly, the Petition deserves to be dismissed.

35. Hence the following order.

: O R D E R :

- (i) The Petition stands dismissed with costs.
- (ii) Rule discharged.

[N. J. JAMADAR, J.]