IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 70 OF 2009
WITH
INTERIM APPLICATION NO. 10029 OF 2024

1. Homi Framroze Mehta
Age 74 years, Occupation Business,
Residing at 9-A, Ambuj,
S.K. Barodawalla Marg, Mumbai 400 026.

2. Furrokh Russa Mehta
Age 68 years, Occupation Business,
residing at Eddie House, Peddar Road,
Mumbai 400026.

3. Nari Dickey Chothia
Age 40 years, Occupation Business,
residing at "Beau Lieu" 29 Doongersey Road,
Mumbai 400 006.
Being the Trustees of the Sir Homi Mehta Trust
having registered office at Mehta House, 79/91
Mehta House, Mumbai Samachar Marg,
Mumbai 400 001. ...Applicants

Versus

The United India Insurance Co. Ltd.,
a company/Corporation having its registered office
at United India House, 24, Whites Road,
Chennai 600 014 and Mumbai regional office at No.1,
Stadium House, Veer Nariman Road, Churchgate,
Mumbai 400020 and also address at the suit ..Respondents

AND
CIVIL REVISION APPLICATION NO. 71 OF 2009
WITH
INTERIM APPLICATION NO. 10030 OF 2024

1. Homi Framroze Mehta
Age 74 years, Occupation Business,

This is a corrected order as per speaking to the minutes of order dated 09/10/2025

Residing at 9-A, Ambuj,
S.K. Barodawalla Marg, Mumbai 400 026.

2. Furrokh Russa Mehta
Age 68 years, Occupation Business,
residing at Eddie House, Peddar Road,
Mumbai 400026.

3. Nari Dickey Chothia
Age 40 years, Occupation Business,
residing at "Beau Lieu" 29 Doongersey Road,
Mumbai 400 006.
Being the Trustees of the Sir Homi Mehta Trust
having registered office at Mehta House, 79/91
Mehta House, Mumbai Samachar Marg,
Mumbai 400 001. ...Applicants

Versus

1. The United India Insurance Co. Ltd.,
a company/Corporation having its registered office
at United India House, 24, Whites Road,
Chennai 600 014 and Mumbai regional office at No.1,
Stadium House, Veer Nariman Road, Churchgate,
Mumbai 400 020 and also address at the suit
premises being Mehta House, Third Floor,
79/91 Mumbai Samachar Marg, Mumbai – 400023.

2. Zenith Securities & Investments Ltd.
a limited company having its registered office
at Mehta House, 79 Mumbai Samachar Marg,
Fort, Mumbai 400 001 and also place at business at
Mehta House, 2nd floor, and also occupying
the third floor, 79/91 Mumbai Samachar Marg,
Mumbai 400 023. ..Respondents

AND
CIVIL REVISION APPLICATION NO. 72 OF 2009
WITH
INTERIM APPLICATION NO. 10070 OF 2024

1. Homi Framroze Mehta

Age 74 years, Occupation Business,
Residing at 9-A, Ambuj,
S.K. Barodawalla Marg, Mumbai 400 026.

2. Furrokh Russa Mehta
Age 68 years, Occupation Business,
residing at Eddie House, Peddar Road,
Mumbai 400026.

3. Nari Dickey Chothia
Age 40 years, Occupation Business,
residing at "Beau Lieu" 29 Doongersey Road,
Mumbai 400 006.

Being the Trustees of the Sir Homi Mehta Trust
having registered office at Mehta House, 79/91
Mehta House, Mumbai Samachar Marg,
Mumbai 400 001. ...Applicants

Versus

1. The United India Insurance Co. Ltd.,
a company/Corporation having its registered office
at United India House, 24, Whites Road,
Chennai 600 014 and Mumbai regional office at No.1,
Stadium House, Veer Nariman Road, Churchgate,
Mumbai 400 20 and also address at the suit
premises being Mehta House, Third Floor,
79/91 Mumbai Samachar Marg, Mumbai – 400023.

2. Zenith Securities & Investments Ltd.
a limited company having its registered office
at Mehta House, 79 Mumbai Samachar Marg,
Fort, Mumbai 400 001 and also place at business at
Mehta House, 2nd floor, and also occupying
the third floor, 79/91 Mumbai Samachar Marg,
Mumbai 400 023. ..Respondents

***

Mr. Girish Godbole, Senior Advocate a/w Ms. Ferzana Behramkamdin, Ms. Neha Rukhana, Mr. Abhishek Nair i/b FZB & Associates for the Applicants.
Mr. V. Y. Sanglikar for Respondent in all CRAs.

***

CORAM : M. M. SATHAYE, J.
RESERVED ON : 9th SEPTEMBER 2025
PRONOUNCED ON : 6th OCTOBER 2025

JUDGMENT :

1. Heard learned counsel for the parties. Perused record. Rule was granted on 06/05/2009.

2. Civil Revision Application No. 70 of 2009 is filed original Plaintiffs / landlord challenging the Judgment and Decree dated 23/07/2008 passed in Appeal No. 309 of 2006 by the Appellate Bench of Small Causes Court, Mumbai. By the said impugned Decree, the Appeal filed by Defendant Insurance Company was allowed and the Judgment and Decree passed by the Trial Court dated 08/03/2006 in TE & R Suit No. 171/181 of 2003 was set aside and said the suit was dismissed.

3. Civil Revision Application No. 71 of 2009 is filed by original Plaintiffs / landlord challenging the Judgment and Decree dated 23/07/2008 passed in Appeal No.314 of 2006 by the Appellate Bench of Small Causes Court, Mumbai. By the said impugned Decree, the Appeal filed by Defendant Insurance Company was allowed and the Judgment and Decree passed by the Trial Court dated 04/03/2006 in TE & R Suit No. 169/179 of 2003 was set aside and the said suit was dismissed.

4. Civil Revision Application No. 72 of 2009 is filed by original Plaintiffs / landlord challenging the Judgment and Decree dated 23/07/2008 passed in Appeal No. 307 of 2006 by the Appellate Bench of Small Causes Court, Mumbai. By the said impugned Decree, the Appeal filed by Defendant Insurance Company was allowed and the Judgment and

Decree passed by the Trial Court dated 06/03/2006 in TE & R Suit No. 170/180 of 2003 was set aside and the said suit was dismissed.

5. The said suits were decreed directing the Respondent Insurance company and other defendant in 2 suits, to hand over vacant and peaceful possession of the respective suit premises to Applicants. The decree of eviction was not challenged by the other Defendant No. 2 in TE & R Suit No. 169/179/2003 and other Defendant No. 1 in TE & R Suit No. 170/180/2003. Therefore the decrees in respective suits attained finality so far as other Defendant is concerned. Therefore as of today, the revision is only opposed by the Insurance Company.

6. The Revision Applicants are Trustees of Sir Homi Mehta Trust which is owner of the suit building and contesting Respondent is the Insurance Company. The Applicants filed the aforesaid three suits for recovery of three non-residential suit premises viz. 720.56 sq. ft on the ground floor, 7120 sq.ft. on the 3rd floor and 7120 sq.ft. on the 2nd floor of suit building known as “Mehta House” situated at 79/91, Mumbai Samachar Marg, Mumbai, respectively. Rents for the said suit premises were Rs.111/- per month, Rs.1620/- per month and Rs.1403/- per month respectively. The suits were filed u/s. 41 of the Presidency Small Causes Courts Act, 1882 (“PSCC Act” for short) for recovery of suit premises on the ground that lease in favour of the Respondents have been terminated by quit notice issued under section 106 of the Transfer of Property Act, 1882 (“TP Act” for short), however, the Respondents have not vacated the suit premises. The Applicants contended that the Respondent Insurance company is a Corporation with paid up capital exceeding Rs.1.00 Crore and therefore as per section 3(1)(b) of Maharashtra Rent Control Act, 1999 (“MRC Act” for short), said Act and protection thereunder does not apply to the suit premises and therefore the

Court has jurisdiction and entertain and decide the Suit under the provisions of Section 41 of the PSCC Act. It is contended that lease has been duly terminated and therefore Applicants are entitled to receive possession.

7. The Respondent – Insurance Company filed written statement contending *inter alia* it is not the Corporation or limited company or public undertaking as alleged. That the Respondent is occupying the suit premises since time of nationalization of the Insurance Business. That Respondent is a government company registered under the provisions of Company Act, 1936 and therefore the Respondent is not exempted from application of the MRC Act as alleged under section 3(1)(b) thereof. That the Respondent is protected under provisions of MRC Act.

8. The parties were heard on the merits and on appreciation of the evidence, the suits came to be decreed directing the Respondents to hand over vacant and peaceful possession of the suit premises to the Applicants. Trial Court ordered inquiry in respect of the *mesne profit* as per Order XX Rule 12 of the Civil Procedure Code, 1908 ("CPC" for short). The Trial Court framed issues including the issue of maintainability of the suit and application of section 3(1)(b) of the Rent Act. The Trial Court found that the suit is maintainable and further found that provisions of Section 3(1)(b) of the Rent Act applies to the Respondent Insurance Company and therefore it does not enjoy the protection of the Rent Act. It is found that tenancy has been legally and validly terminated.

9. Only Respondent Insurance Company filed the aforesaid Appeals. The Appellate Bench of the Small Causes Court, framed points for consideration regarding maintainability of the Suit and the application of Section 3(1)(b) of the Rent Act and about entitlement to the decree of possession. The

Appellate Court, in essence, relied on the judgment of this Court in case of **Smt. Leelabai Gajanan Pansare & Ors. vs. The Oriental Insurance Co. Ltd & Ors. (First Appeal No. 1245 of 2004, Judgment dated 20/12/2006)** and held that **the Respondent Insurance Company is a government company** and therefore since suit premises are let out to a government company, the landlord has to file the suit under the provisions of MRC Act and cannot take shelter of Section 3(1)(b) thereof. In short, the Appellate Court held that Section 3(1)(b) does not apply to the Respondent Insurance Company. The Appellate Court allowed the Appeals thereby setting aside the decrees of eviction and dismissing the suits.

10. It is material to note that the both the Trial Court as well as the Appellate Court concurrently held that the tenancy of the Respondents have been legally and validly terminated by the suit notices dated 16/01/2003.

11. Before I proceed to record the submissions of parties, it is important to note that admittedly in all three cases, the Respondent Insurance Company has handed over the possession of the suit premises on 'without prejudice basis' to the Applicants on 30/08/2022.

12. Learned Senior Advocate Mr. Godbole appearing for the Applicants relied upon the Judgment of Hon'ble Supreme Court arising out of same case -**Lilabai Gajanan Pansare and Others vs. Oriental Insurance Company Limited and Others [(2008) 9 SCC 720]**. He submitted that the judgment on the basis of which the Appellate Court had allowed the Appeals, dismissing the suits, has been set aside by the Hon'ble Supreme court holding that entities like the Respondent Insurance Company are covered by Section 3(1)(b) of the MRC Act and therefore they are not entitled to protection under said Act. He submitted that unfortunately the Judgment of this Court in

Leelabai Gajanan Pansare dated 20.12.2006 (supra) was holding the field when the Appellate Court decided the Appeals and therefore the suits came to be dismissed. He submitted that now, with the legal position clarified by the Hon'ble Supreme Court, the Revisions must succeed and the decrees of eviction passed the Trial Court must be confirmed. He also relied upon the judgment of this Court in **Writ Petition No.80/2017 order dated 14/07/2017 in Mr. Mujibur Rehman Haji Israr Alam Siddiqui vs. M/s. K. T. Kubal and Co.** in support of his submission about relevant date from which *mesne profits* must be awarded. He submitted that *mesne profits* must be granted from the date of termination of lease. He submitted that the basis of *mesne profits* is unlawful occupation and therefore the Applicants are entitled to *mesne profits* from the date of termination of lease from January 2003.

13. Per contra, Mr. Sanglikar, learned counsel for the Respondent Insurance Company submitted that suit must be dismissed because under section 5 of the Indian Trusts Act, 1882 no trust in relation to immovable property (like the Applicants' trust) is valid unless declared by a registered instrument. He submitted that since plaint proceeded on the footing that the Plaintiffs are trustees of Sir Homi Mehta Trust being owners of the immovable property, unless it is registered trust, they cannot maintain the suit as this is a private trust. Relying on the cross-examination of the P.W. No. 1, Mr. Sangalikar contended that it is admitted that the Plaintiff-Trust is not a registered. He submitted that *mesne profits* cannot be granted from the date of termination of lease and can be granted at the most from the date of filing of the Suit. Relying on Bombay amendment of Order XX, Rule 12 of the Civil Procedure Code, 1908 ("CPC" for short), it is contended that there is no reason why the Trial Court has held in last paragraph 26/27 that 'since the Plaintiffs are entitled to recover possession from date of quit notice being

served, they are entitled to claim *mesne profit'*.

14. Mr. Godbole, learned Senior Counsel for the Applicants, in rejoinder submitted that so called admission relied upon by Mr. Sanglikar can not be taken out of context, in as much as, the objection was raised about suit being not maintainable in view of lack of permission from Charity Commissioner under the provisions of Bombay Public Trust Act. He submitted that this contention based on section 5 of Indian Trusts Act was never raised before the Courts below, nor such issue or point for determination has been framed and such contention can not be and should not be allowed for the first time at the stage of Revision Application. He submitted that provisions of Order XX, Rule 12, sub-rule 1(a), (b), (c) (Bombay amendment) gives ample power to the Court to pass a decree of *mesne profits* for period prior to institution of Suit, from the institution of the suit until delivery of possession or relinquishment of possession with notice to decree holder. He submitted that since the Applicants admittedly inducted the Respondent as tenant/lessee, title of the Applicants cannot be denied and the fact that rent was being paid to the Applicants, is sufficient to bring Applicants within definition of Lessor.

15. I have carefully considered the rival submissions and perused the records.

16. There is no dispute that the Judgment of the Division Bench of this Court in **Leelabai's case** dated 20/12/2006 was holding the field when the impugned Judgment and Decrees were passed. There is also no dispute that the said Judgment of this Court was challenged before the Hon'ble Supreme Court and the Appeals have been allowed. Admittedly, the Hon'ble Supreme Court has held that companies such as Oriental Insurance Company, United

India Insurance Company and Bharat Petroleum Corporation Limited and such other government companies are not entitled to protection of MRC Act in view of application of Section 3(1)(b) thereof. In view of this changed legal position, the very basis of the impugned decrees, is taken away. Since the Respondent Insurance company does not enjoy the protection of the MRC Act, the suits as filed by the Applicants after due termination of tenancy/lease, are very much maintainable. The Trial Court after considering the evidence on record and on holding that the tenancy/lease has been legally terminated, had decreed the suits. No fault can be found with the decree of eviction/possession passed by the Trial Court in respect of the three suit-premises.

17. The objection of Mr. Sanglikar based on section 5 of the Indian Trusts Act, is only stated to be rejected. Said objection was not raised before the Trial Court or the Appellate Court. Said objection is being advanced for the first time before this Court and therefore, cannot be considered. From the issues framed by the Trial Court as well as points of determination framed by the Appellate Court, it is clear that the parties never intended to dispute the claim on the basis of non-registration as required under Indian Trusts Act. This argument made on behalf of the Respondent Insurance Company is nothing but an advocate's effort to make submission off the cuff, as a last-ditch effort for an entity which has admittedly lost protection of the MRC Act.

18. From perusal of the pleadings and judgments, it is seen that an objection was raised in the written statement that the suit is bad in law as permission of the Charity Commissioner is not taken as required under Bombay Public Trust Act. The suggestion given to the Plaintiff's witness in cross-examination has to be read in that context, where he has stated that

the Plaintiff-Trust is not registered. This registration means registration with office of the Charity Commissioner as a public trust and not registration as a private trust.

19. In any case, learned senior counsel Mr. Godbole for the Applicants submitted on instructions that registration document of the Applicant's Trust – i.e. Deed of Settlement dated 17/02/1926, registration number BOM 965 of 1926 as well as Deed of Conveyance of suit building dated 26/09/1941, registration number BOM 4729 of 1941 can be produced on record, if the Court permits. Learned counsel for the Respondent Insurance Company, Mr. Sanglikar, however strongly objected production of any new document at this stage.

20. The counsel for the Respondent-Insurance Company does not want new document to be placed on record for perusal of this Court, offered in answer to his own objection taken first time in this Court. This speaks volumes. When an objection based on factually contentious issue (about the trust being registered or not) is urged for consideration first time in High Court, the same party does not want fresh document sought to be produced in answer, to be considered.

20.1 So far as the judgment of **Govind Ram and others v/s. Madan Gopal and others [AIR (32) 1945 Privy Council 74]** relied upon by Mr. Sanglikar is concerned, in the facts of that case, effect of non registration under Section 5 of the Indian Trusts Act was under consideration along with Section 17 of the Registration Act. Since, in the present case, the dispute is between the landlord and tenant and since it is not disputed by the Respondent/Insurance Company that the suit premises were taken on lease/rent from the Applicant/Trustees of the said Trust, the

Respondent/Insurance Company is not entitled to challenge the status/title of the Applicants as Landlord. For this reason, coupled with aforesaid facts and circumstances, the said case law of **Govind Ram (supra)** will not advance the case of the Respondent Insurance Company.

21. For the said reasons, the objection of the learned counsel for Respondent-Insurance Company based on non-registration of the Applicant-Trust under Indian Trusts Act, is rejected.

22. So far as rival submissions about date from which *mesne profits* can be granted is concerned, this Court need not go into that aspect at this stage, because the Trial Court has already directed an inquiry in that respect as provided under Order XX Rule 12 of the CPC, which will take place independently in accordance with law. Suffice it to clarify that the observations in paragraph 26/27 of the judgments of the Trial Court making reference to date of quit notice, shall not prejudice rival contentions of both sides in that regard.

23. In the result, the Revision Applications succeed. The impugned Judgment and Decrees dated as a 23/07/2008 passed in Appeal No. 309 of 2006, Appeal No.314 of 2006 and Appeal No. 307 of 2006 passed by Appellate Bench of the Small Causes Court at Mumbai, are set aside. The Judgment and Decrees passed by Small Causes Court in TE & R Suit No. 171/181 of 2003 dated 08/03/2006, TE & R Suit No. 169/179 of 2003 dated 04/03/2006 and TE & R Suit No. 170/180 of 2003 dated 06/03/2006 are confirmed.

24. Rule is made absolute and above three Civil Revision Applications and pending Interim Applications are disposed of in above terms. No order as to costs.

25. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)