

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.5 OF 2025
WITH
INTERIM APPLICATION NO.16016 OF 2024

Satyabhama Unni through legal heir E.K. Manickam	...Applicant
<i>Versus</i>	
Ramesh Ranchoddas Parekh & Ors.	...Respondents

Ms. Eventa A. Gonsalves a/w. Mr. Reyden L. Gonsalves, for the Applicant.
Mr. Prashant G. Karande a/w. Mr. Praful S. Pawar and Mr. Sudam S. Patil, the Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.
DATED : 3rd MARCH 2025

PC:-

1. Heard Ms. Gonsalves, learned Counsel appearing for the Applicant and Mr. Karande, learned Counsel appearing for the Respondent No.1.

2. The challenge in this Civil Revision Application filed under Article 227 of the Constitution of India is to the legality and validity of the Judgment and Decree dated 11th October 2024

passed by the learned Division Bench of Small Causes Court, Mumbai in Appeal No.42 of 2019.

3. It is the submission of Ms. Gonsalves, learned Counsel that the suit has not been filed on the ground of subletting. As far as the non-user is concerned, the electricity bill shows consumption for the relevant period and therefore, premises are used. She therefore, submitted that the decree on the ground of non-user should not have been passed. She further submitted that the evidence on record shows that during the said relevant period of 22nd October 2007 to 22nd April 2008, the Petitioner i.e. Defendant No.3 has occupied the suit premises and for other period also the suit premises is occupied. She therefore, submitted that the Civil Revision Application requires consideration, particularly when the learned Trial Court has dismissed the suit.

4. On the other hand, Mr. Karande, learned Counsel appearing for the Respondent No.1 submitted that the consumption of electricity for the relevant period is there as some third person is occupying the suit premises. It is neither being occupied by the Defendant Nos.1 and 2 nor the Defendant No.3, who is the

daughter of Defendant Nos.1 and 2. He submitted that admittedly, during the relevant period, the Defendant Nos.1 and 2 have shifted to Kerala and therefore, they were not occupying the premises. He submitted that evidence on record shows that even during the relevant time also the Defendant No.3 i.e. the present Applicant is not occupying the said premises. He submitted that the premises have been let out for the occupation by the original tenant i.e. husband of the Defendant No.1. In any case, he submitted that all the Defendants who are the heirs of the original tenant were not occupying the suit premises during the relevant period. He submitted that on the basis of the evidence on record, the learned Appellate Court has recorded the finding that some third person is occupying the suit premises even for the relevant period and therefore, no interference in the impugned order of the learned Appellate Court is warranted.

5. The Respondent No.1 is landlord of the suit premises. The Respondent No.1 filed on 23rd April 2008 suit bearing R.A.E. Suit No.153/354 of 2008 seeking eviction on the ground of non-user available under Section 16(1)(n) of the Maharashtra Rent Control

Act, 1999(**“the said Act”**). The relevant portion of Section 16(1)(n) of the said Act reads as under:

“16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-.....

*....(n) that **the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.**”*

(Emphasis added)

6. As the suit has been filed on 23rd April 2008, the relevant period is from 22nd October 2007 to 22nd April 2008. The learned Trial Court has dismissed the suit. The learned Appellate Court decreed the suit. The relevant portion of the reasoning given by the learned Appellate Court is in paragraph Nos.28 and 29, which reads as under:

“28. The defendant no.3(DW1) has come with the case through her pleadings and evidence that said K.S. Rajan was residing in the suit premises since last 40 years as a family member of deceased tenant. There is no evidence on record to that effect

from her side. Also, she has not examined him in respect of the same. **From the pleadings of both the parties, it is an admitted fact on record that only defendants are heirs and legal representatives of original deceased tenant.** It is commonly noticed that individual family consists of parents and their children only. In the light of the same, if her said story regarding he is residing therein like family member is considered, it can be said that he is not the family member of original deceased tenant. Moreover, due to want of evidence, her said story cannot be relied upon. **Besides, the foremost factor needs for consideration is non-user by tenants and not by the third party. In view thereof, by no angle he can be said as family member of original deceased tenant.**

29. For the first time, **defendant no.3(DW1) has stated in her evidence that during the said period the suit premises was not un-used.** After taking note of her this much evidence, point strikes is that though she has categorically stated in her pleadings and evidence both that since from the month of September/October, 2007 till 27.06.2008 deceased defendant nos. 1 and 2 both were not residing in the suit premises and even she had not claimed her residence over there during the said period of non-user so why she is saying that during the said period the suit premises was not un-used. The obvious reason for the same is admission given by her in her cross examination dated 28.09.2018. Because, in it she has admitted that since last 10 years i.e. around in the month of September, 2008 said couple is residing in the suit premises, she had allowed them to reside therein as the male spouse by name Chandra Shetty, is friend of her son, **on the said date of her cross examination i.e 28.09.2018, they were residing therein.** She has further admitted that as per her say, they are residing therein free of costs. Her those admission states that said couple is

*residing in the suit premises at about from September, 2008 and they are in its continuous use, occupation and possession. **So it is for defendant No.3(DW1) to satisfy this court as to how the said couple is in use, occupation and possession of it.** In respect of it, her case is as stated above only. But the same is not believable. The reason for the same is that in Mumbai city the area of Andheri is costly area wherein the suit premises is situated and thus, nobody can allow to reside son's friend with wife therein.”*

(Emphasis added)

Thus, the learned Appellate Court has recorded that some third persons are occupying the property and therefore, it is for the Applicant to satisfy how those third persons are occupying the property.

7. In view of the findings of the learned Appellate Court as recorded in paragraph Nos.28 and 29, it is necessary to consider the cross-examination of D.W.1-Satyabhama Unni i.e. Defendant No.3 conducted on 28th September 2018 (pages 110 and 111). The relevant portion of the said cross-examination is as under:

*“(i) **As Chandra Shetty is friend of my son thats why I have permitted Chandra Shetty and Sunita Shetty to reside in the suit premises.** I do no remember in which year we have permitted them to reside in the*

suit premises. Today also, Chandra Shetty and Sunita Shetty are residing in the suit premises.

*(ii) It is true to say that, the Hon'ble Court has by passing Order below injunction Notice restrained me from parting with the possession of the suit premises in any manner of what-so-ever till the decision of the suit. It is true to say that, by filing say in the said injunction notice, I had contended that, I am not intending to part with possession of the suit premises in any manner. **It is true to say that, after passing the abovesaid Order by the Hon'ble Court in the Injunction Notice on 8th April, 2009, I have given the suit premises to Chanda Shetty and Sunita Shetty to reside therein. I do not remember when I have given the suit premises to Chandra Shetty and Sunita Shetty to reside therein.** Witness voluntarily states that, since from last 10 years they are residing in the suit premises. **It is true to say that, though the plaintiff filed this Contempt Notice against me on 29th September, 2011 Chandra Shetty and Sunita Shetty are still residing in the suit premises.**"*

(Emphasis added)

The said cross-examination shows that D.W.1 i.e. the present Applicant has given vague answers.

8. In this background of the matter, it is important to note the following admissions given by the Applicant i.e. D.W. 1 in her cross-examination conducted on 24th July 2018 (page Nos.108 and 109).

“(i) It is true to say that, when the plaintiff filed this suit in the year 2008 at that time, I was residing at 24A/23, ‘Takshila’, Mahakali Caves Road, Andheri (East). It is true to say that, I have received the writ of summons of this suit to me at the said address.

“(ii) In the year 2008, when this suit has been filed, only I was residing in the suit premises. When the suit has been filed in the year 2008, at that time, my mother Vesu Manickam and brother Balkrishna Manickam were residing at outvillage at Kerla.”

The above answers given in the cross-examination of the Applicant clearly shows that the Applicant is not trustworthy. She states that when suit was filed she was staying at some other premises i.e. at Takshila, Andheri and she has received suit summons on the said address. Thereafter, immediately she changed her stand and stated that she was staying in the suit premises. In fact, the injunction order passed by the learned Trial Court has also been breached. The evidence on record clearly supports the findings recorded by the learned Appellate Court. It is clear that the suit premises has been let out for occupation by tenant. Some third persons are occupying the suit premises. Thus, it is clear that the suit premises are not being used for the purpose for which they are let out.

9. Accordingly, no case is made out for interference in the impugned order. The Civil Revision Application is dismissed, with cost of Rs.25,000/-. The cost to be paid by the Applicant to the Respondents within a period of eight weeks from today.

10. As the Civil Revision Application itself is dismissed, nothing survives in the Interim Application and the same is also dismissed.

11. At this stage, a request is made by Ms. Gonsalves, learned Counsel appearing for the Applicant to stay the operation of this order. However, the evidence on record clearly shows that the Applicant is not in the possession of the suit premises and therefore, no case is made out for granting stay.

[MADHAV J. JAMDAR, J.]

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