

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11152 OF 2025**

Sushil Kevalchand Bora

..Petitioner

Versus

Moreshwar Sadashiv Gosavi (Dec) Through his
Legal Representatives, 1A. Shailesh Moreshwar
Gosavi & Ors

...Respondents

Mr. Jaydeep Deo, with Onkar Gawade, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 21st AUGUST 2025

ORDER:

1. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and order dated 8th May 2025, passed by the learned Principal District Judge, Pune, in Civil Appeal No. 598 of 2015, whereby the Appeal preferred by the Petitioner against a judgment and decree dated 7th January 2025, passed by the Trial Court in Civil Suit No. 504 of 2009, came to be dismissed.

2. By the said judgment in Civil Suit No. 504 of 2009, the Trial Court had passed a decree of eviction against the Petitioner on the ground of unlawful subletting of the demised premises by the Defendant No.1, who was the father of the Petitioners, and the change of user, non-user of the demised premises, and the personal bona fide

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requirement of the landlord. The Courts below found that, the demised premises was let out to deceased-Defendant No.1 for the purpose of residence in the year 1965; the Defendant No.1 continued to occupy the demised premises for the purpose of residence till the year 1993 and since 1993, the Defendant No.2 started to use the demised premises for a commercial purpose, i.e., the business activity of M/s Sakhi Industries Limited. Therefore, there was unlawful subletting, change of user and non-user for a continuous period of six months preceding the institution of the Suit without a reasonable cause. And the suit premises was also required reasonably and bona fide, as the evidence of the Plaintiff went unimpeached.

3. Mr. Deo, the learned Counsel for the Petitioner, made an endeavour to draw home the point that the Defendant No.2 was the director of M/s Sakhi Industries Limited, which had obtained the demised premises from the Plaintiff in the year 1993. There was no subletting. Nor the change of user of premises. In fact, a fresh tenancy was created in favour of M/s Sakhi Industries Limited after the tenancy of the Petitioner's father came to an end. In any event, the landlord had accepted the rent of the demised premises, without any demur, till the date of the institution of the Suit.

4. It was further urged that the evidence as regards the ground of personal bona fide requirement was also not properly appreciated by

the Courts below. The Appellate Court unjustifiably declined to permit the Petitioner to adduce evidence under the provisions of the Order XLI Rule 27 of the Code of Civil Procedure, 1908 (“the Code”). Therefore, the matter requires consideration.

5. I find it difficult to accede to the aforesaid submissions. From the perusal of the Written Statement of Defendant No.1 and Defendant No.2, it appears that the defences were irreconcilable. While controverting the assertion of subletting, the Defendant No.1 contended that the Defendant No.2 was in the occupation of the Suit premises in his capacity as the son of the Defendant No.1. The Defendant No.2 had started the business of M/s Sakhi Industries Limited in the year 1993, with the consent of the landlord. The Defendant No.2, on the other hand, contended that M/s Sakhi Industries Limited had taken the Suit premises on rent in the year 1993 and the Defendant No.1 had not sublet the Suit premises.

6. It emerged from the evidence (which also went uncontroverted as the Defendants did not cross-examine the Plaintiff) that the Suit premises was let out to the deceased Defendant No.1 in the year 1965, for the purpose of residence. The Suit premises was used for commercial purpose since the year 1993. There is no material to indicate that, the tenancy of the deceased-Defendant No.1 came to an end by surrender or otherwise and a fresh jural relationship was formed

between the landlord and M/s Sakhi Industries Limited. On the contrary, an endeavour was made by the Defendants to contend that, the Defendant No.2 was in the use and occupation of the demised premises, being the son of the deceased-Defendant No.1.

7. The submission on behalf of the Defendants that the Suit premises was used for commercial purpose with the consent of the landlord, is required to be stated to be repelled as there is a prohibition against the conversion of the residential premises into the commercial premises under Section 30 of the Maharashtra Rent Control Act 1999, which is *para materia* Section 25 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. No landlord can thus permit or give consent to convert the residential premises into commercial premises, and such contravention also entails punishment under sub-Section (2) of Section 30 of the Rent Act of 1999. A clear case of change of user of the Suit premises was thus made out.

8. As the Defendants claimed that M/s Sakhi Industries Limited was carrying on the business in the Suit premises, which was let out to the deceased-Defendant No.1 for the purpose of residence, a case of unlawful subletting can also said to have been made out.

9. The Courts below thus committed no error in passing the decree of eviction on the ground of unlawful subletting, change of user and non-user as the later is a necessary corollary of the change of user. On

the aspect of the personal bona fide requirement as well, the evidence of the Plaintiff went unimpeached.

10. In any view of the matter, the concurrent finding of facts, based on objective material, nay the stand of the Defendants in the Written Statement, which constitute judicial admissions, do not warrant any interference.

11. The Petition thus stands dismissed.

[N. J. JAMADAR, J.]