

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 307 OF 2025

1. Miss. Zarene Framroz Munshi
2. Ms. Dossu Nariman Paymaster (deleted) ...Applicants

Versus

Mrs. Gunvanti Vijay Bhandari and ors. ...Respondents

Mr. Vaibhav Sugdare, a/w Gaurav Thakur, i/b A. S. Dayal &
Asso., for the Applicants.

CORAM: N. J. JAMADAR, J.

DATED: 20th JUNE, 2025

ORDER:-

1. This revision application is directed against a judgment and decree dated 27th February, 2025 passed by the Appellate Bench of the Court of Small Causes in Appeal No.186/2015, whereby the appeal preferred by the applicant – plaintiffs assailing the judgment and decree passed by the Trial Court in R.A.E. Suit No.422/622/2007 dated 27th February, 2015 thereby dismissing the suit, came to be dismissed.

2. The applicants are the landlords of a premises being Flat No.2, 2nd Floor, Forjett House, Forjett Street, Gowalia Tank, Mumbai, ("the suit flat"). The applicants instituted the suit for eviction on the ground that respondent No.1 had not used the suit flat for the purpose it was let for the period of more than six

months immediately preceding the institution of the suit, without any reasonable cause and had also unlawfully sublet the suit flat to Y. Bokaria (R2). It was the case of the applicants that respondent No.1 had shifted alongwith her husband to Coimbatore on account of the business of her husband. On 7th December, 2006, when the applicant had visited the suit flat, defendant No.2 was found in the occupation thereof alongwith his wife. Thus, there was unlawful subletting and non-user of the suit flat.

3. Upon contest, the learned Judge, Court of Small Causes was persuaded to dismiss the suit returning the findings that the plaintiffs failed to prove both unlawful subletting and non-user of the suit flat.

4. Being aggrieved, the plaintiffs preferred appeal. By the impugned judgment and decree, the Appellate Bench of the Court of Small Causes found no error in the judgment and decree passed by the Trial Court and affirmed the same.

5. Being further aggrieved, the applicants have invoked the revisional jurisdiction.

6. Mr. Vaibhav Sugdare, the learned Counsel for the applicants, would submit that the Trial Court as well as the Appellate Court committed a grave error in appreciating the

evidence. In the process, the Trial Court and the Appellate Court unjustifiably discarded clear and categorical admissions in the cross-examination of DW1 to the effect that defendant No.1 did not reside in the suit premises from September, 2005 to January, 2007. Documentary evidence in the nature of the marriage invitation card of the daughter of defendant No.1 which indicated that the place of their residence at Coimbatore, was also lightly brushed aside. The Appellate Court even misread the evidence in as much as the admitted period of non-user was considered from September, 2006 to January, 2007 and thus short of the statutory period of six months. Mr. Sugdare would further urge that even on the ground of unlawful subletting the appreciation of evidence by the trial and Appellate Court was far from satisfactory.

7. I have carefully perused the material on record, including the evidence adduced by the parties. The submission of Mr. Sugdare that there was an admission as regards the non-user of the suit flat from September, 2005 to January, 2007, even if taken at par, does not advance the cause of the applicants. Firstly, it is pertinent to note that the non-user must be for six months immediately preceding the institution of the suit. Evidently, the suit came to be instituted in the month of April,

2007. The non-user allegedly lasted upto January, 2007. Secondly, the non-user must be without reasonable cause. The purported admission by defendant No.1 cannot be said to be absolute and unqualified. The defendant No.1 had stated that on account of want of repairs and safety reasons, it was not possible for defendant No.1 to reside in the suit premises from September, 2005 to January, 2007.

8. It is also necessary to note that the Courts have recorded a finding that the entire family of defendant No.1 including her father-in-law was residing in the suit flat and the mother-in-law of defendant No.1 was found residing in the suit premises when the Bailiff went to serve the suit summons. Reliance on the purported marriage invitation card showing the address of defendant No.1 at Coimbatore does not advance the plaintiffs case to the extent desired. It is not unusual to have the marriage at the home town.

9. On the aspect of the alleged subletting, the Courts have recorded a categorical finding that Y. Bokaria (R2), to whom the premises was allegedly unlawfully sublet, was a fictitious person. He could not be served with the suit summons. Conversely, the mother-in-law of defendant No.1 was found in the occupation of the suit flat when the Bailiff had visited the

suit flat to serve the suit summons and she had informed the Bailiff that the defendant No.1 was then out of station.

10. In the backdrop of the aforesaid nature of the evidence, the concurrent findings of facts recorded by the Trial Court and Appellate Court do not warrant any interference in exercise of the revisional jurisdiction. The civil revision application, therefore, deserves to be dismissed.

11. Hence, the following order:

: O R D E R :

- (i) The Civil Revision Application stands dismissed.
- (ii) No costs.

[N. J. JAMADAR, J.]