

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 388 OF 2025

Gopal P Naik Alias Shetty (Since Deceased) ..Applicants
Through LRs 1a. Shekhar Gopal Naik & Ors

Versus

The Madhavnagar Cooperative Housing Society ...Respondents
& Anr

Mr.S.B. Prabhavalkar, i/b Nilesh Parte, for the Applicants.

CORAM: N. J. JAMADAR, J.

DATED : 28th JULY 2025

P.C.:

- 1.** Heard Mr. Prabhavalkar, the learned Counsel for the Applicants.
- 2.** This Revision Application is directed against a judgment and decree dated 20th March 2025, passed by the Appellant Bench of Court of Small Causes, Mumbai, in R Appeal No. 173 of 2021, whereby the Appeal preferred by the Applicants, the Successor in interest of Gopal P Naik Alias Shetty, the deceased Plaintiff, against the decree passed in RAD Suit No. 1783 of 2005, dismissing the Suit preferred by the original Plaintiff for declaration of tenancy in respect of Room No.1, situated on the first floor of the building at Madhavnagar Cooperative Housing Society, Bhavani Shankar Road, Dadar, Mumbai 400 0228,

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(“the Suit Room”), came to be dismissed by affirming the said Decree dated 6th February 2021.

3. The original Plaintiff had sought a declaration that he was in the occupation of the Suit Room in the capacity of a tenant thereof at the contractual rent of Rs.100/-, since prior to 1970.

4. The learned Judge, Court of Small Causes, was persuaded to dismiss the Suit holding, *inter alia*, that another Suit, being RAD Suit No. 1936 of 1996, wherein identical contentions were raised by the Plaintiff, came to be dismissed, and there was no reliable material to substantiate the claim of the Plaintiff that he was the tenant of the Suit Room.

5. Being aggrieved, the Applicants preferred an Appeal before the Appellate Bench. By the impugned order, the Appellate Bench confined its determination to the question as to whether the Appellants prove that the deceased Plaintiff was a tenant of the Suit Room and declined to delve into the issue as to whether the deceased Plaintiff was a gratuitous licensee of the Respondent No.1/Defendant No.1, as another Suit being L.E. Suit No. 67 of 2008, for the eviction of the Plaintiff as a gratuitous licensee was sub judice. The Appellate Bench after evaluating the evidence and the material, concurred with the view of the Trial Court that the Plaintiff failed to establish that he was a tenant in respect of the Suit Room.

6. Mr. Prabhavalkar, the learned Counsel for the Applicants, would submit that indisputably the original Plaintiff had been in the occupation of the Suit Room. The Trial Court as well as the Appellate Bench committed an error in appreciating the evidence on record, especially the Resolutions passed in the meetings of the Respondent No.1-Society, which clearly record that the Suit Room was allotted to the original Plaintiff as a tenant, albeit in the capacity of the caretaker of the Society. The Courts below thus committed an error in dismissing the Suit.

7. I have perused the material on record. The Appellate Bench has recorded in no uncertain terms that there was not an iota of evidence to show the terms on which the Suit Room was allegedly allotted to the original Plaintiff as a tenant, the initial rent, the rent receipts or other document to evidence the payment of rent for over 35 years.

8. On the contrary, the documentary evidence indicated that the original Plaintiff claimed to reside in the Room adjoining the Suit Room. Since in the previous RAD Suit, i.e., 1936 of 1996, the Plaintiff did not seek the declaration in respect of the Suit Room, the principle of constructive res judicata operated in the case at hand. Thus, the Plaintiff was not entitled to such declaration.

9. Upon perusal of the material on record, this Court finds that, there is no scope for interference with the concurrent findings of fact

recorded by the Courts below in exercise of the limited revisional jurisdiction. The prime fact of payment of rent has not been established. The fact that the original Plaintiff had been in the occupation of the Suit Room was not of determinative significance. The Defendant No.1 claims that the Suit Room was occupied by the original Plaintiff as a gratuitous licensee, being a caretaker of the Defendant No.1-Society.

10. The omission to include the Suit Room in the earlier RAD Suit seeking declaration of tenancy in respect of the other premises in the very same building, cannot be brushed aside as inconsequential. In the circumstances of the case the principle of constructive res judicata, does come into play. In the absence of the clear and cogent material to show that the occupation of the Suit Room by the original Plaintiff was in the capacity of the tenant thereof, the mere occupation does not sustain the decree of declaration.

11. Mr. Prabhavalkar, the learned Counsel for the Petitioner would submit that this Court may clarify that the observations in the impugned judgment and decree, shall not influence the decision in L.E. Suit No. 67 of 2008. The question as to whether the impugned judgment is relevant for the determination of L.E. Suit No. 67 of 2008, is required to be determined by the Court seized with L.E. Suit No. 67 of 2008, in accordance with law. If the said judgment is otherwise relevant, this

Court would not be justified in directing that the impugned judgment need not be taken into account at all.

12. Suffice to clarify that L.E. Suit No. 67 of 2008 shall be decided on its own merits, on the basis of the evidence adduced in the said Suit and in accordance with law. The question of relevancy of the impugned judgment while deciding the L.E. Suit No 67 of 2008 is left open for determination by the Court seized with L.E. Suit No. 67 o 2008.

13. With the aforesaid clarification, the Civil Revision Application stands dismissed.

[N. J. JAMADAR, J.]