



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.404 OF 2025**

Nitin Govindan and Ors. ... Applicants

versus

Shantilal Calachand Sheth (deceased)
through legal heirs Ashvinkumar Shantilal
Sheth and Ors. ... Respondents

Mr. Pradeep Thorat with Mr. S.Shamim, Mr. Murtuza Slatewala i/by S. Shamim and Co., for Applicants.

CORAM: N.J.JAMADAR, J.

DATE : 12 AUGUST 2025

P.C.

1. Heard the learned Counsel for the parties.
2. This revision application is directed against the judgment and decree dated 24 March 2025 passed by the Appellate Bench of the Court of Small Causes in A1 Appeal No.417 of 2019, whereby the Appellate Bench dismissed the appeal preferred by the Applicants and affirmed the decree of eviction dated 26 September 2019 passed in RAE Suit No.1869 of 2009.
3. Deceased Respondent – landlord instituted the suit for recovery of possession of a Room in Block No.5 (the suit premises) on the ground that Govind Nair, the Defendant and predecessor-in-title of the Applicants, did not use the suit premises for the purpose for which it was let and changed the user of the suit premises from residential to commercial purpose.
4. The Defendant resisted the suit by contending that the suit premises

was being used for commercial purpose since inception. Thus, there was neither the change in user of the suit premises, nor non-user as alleged.

5. The learned Judge, Court of Small Causes was persuaded to decree the suit holding, inter alia, that incontestably the suit premises was being used for the commercial purpose i.e. tailoring business; and the material on record indicated that the suit premises was initially let for residential purpose only. Change of user of the suit premises also amounted to non-user of the suit premises for the purpose for which it was let, for a continuous period of six months immediately preceding the institution of the suit without reasonable cause.

6. The Appellate Bench of the Court of Small Causes found no error in the judgment and decree passed by the learned Judge.

7. Mr. Thorat, learned Counsel for the Applicants, submitted that the ground of non-user of the suit premises cannot be said to have been established. Firstly, the essential averment that non-user was “without a reasonable cause” was conspicuous by its absence in the plaint. Thus, the Courts below were in error in passing a decree of eviction on the said ground without the vital ingredient of ‘non-user without reasonable cause’ having been pleaded and proved. Mr. Thorat placed reliance on a judgment of this Court in the case of C.R.Shaikh V/s. Lilabai D. Rohida and Anr.¹

1 1980 SCC Online Bom 221

8. In any event, it cannot be said that the suit premises was not used. To this end, reliance was placed on a judgment of a learned Single Judge of this Court in the case of Shantanu Baburao Palaskhedkar V/s. Vinayak Mahadeo Sainkar².

9. Secondly, Mr. Thorat would urge, the Courts below committed a manifest error in discarding the letter (Exh.58) addressed by the erstwhile landlord granting permission to the Defendant for keeping the sewing machine in the suit premises for tailoring business.

10. Thirdly, an inference that the suit premises was initially let for residential purpose was drawn on the basis of entries in the assessment list. In fact, there was no evidence on the aspect of the initial purpose of letting as Dhaval (PW1), the constituted attorney of the Plaintiff, had no personal knowledge. Dhaval (PW1) was not the person who had signed and verified the plaint. It was, therefore, necessary to examine both the Power of Attornies. Reliance was sought to be placed on a judgment of the Supreme Court in the case of Man Kaur (Dead) by LRs V/s. Hartar Singh Sangha³.

11. Having perused the impugned judgments and the material on record, this Court finds that none of the aforesaid challenges, sought to be mounted by Mr. Thorat, deserve countenance. Indisputably, the Defendants had taken a positive and bold defence that the suit premises has been used for

² (2001 SCC Online Bom 543

³ (2010) 10 SCC 512

commercial purpose since inception of the tenancy. Evidently, there was no tenancy agreement which could spell out the purpose of letting. Learned Trial Judge as well as the Appellate Bench placed reliance on the entries in the assessment list which indicated that as late as 2012, the demised premises was assessed as the residential premises. This material was considered by the Courts below to be sufficient to lend credence to the evidence adduced on behalf of the Plaintiff that the demised premises was let for residential purpose.

12. Reliance placed by the Defendant on the letter (Exh.58) to show that the erstwhile landlord had permitted the Defendant to use the demised premises for commercial purpose, cuts the Defendant's case in two ways. On the legal premise, in view of the provisions contained in Section 30(1) of the Rent Act, 1999 (which is *pari-materia* Section 25 of the Rent Act, 1947), there is a prohibition against the using, or permitting the use of, residential premises for a commercial purpose. Sub-Section (2) of Section 30 provides punishment for contravention of the provisions contained in sub-Section (1) of Section 30, which prohibits the conversion of residential premises into commercial premises.

13. On facts, the aforesaid communication, if properly construed, indicates that the Defendant was in possession of the demised premises, there was a settlement between the parties and at the request of the Defendant, the

erstwhile landlord granted permission for keeping sewing machines in the demised premises for tailoring business. Implicit in the said permission is an admission that the demised premises was being used for residential purpose. Had the demised premises been used for commercial purpose since inception of the tenancy, the Defendant would not have sought permission for conversion of the demised premises for commercial purpose.

14. The submission of Mr. Thorat that there was no pleading on the aspect of the non-user without reasonable cause, pales in significance in the context of the fact that the change of user of the premises, which in itself constitutes the non-user of the premises for the purpose for which it was let, in teeth of the statutory prohibition, can never be construed as reasonable. Thus, the reliance placed by Mr. Thorat on the judgments in the cases of C.R.Shaikh (supra) and Shantanu Baburao Palaskhedkar (supra), does not assist the cause of the submission on behalf of the Applicants. In view of the positive case of the Defendants that the suit premises was being used for commercial purpose since inception, which the Courts below on appreciation of evidence, found to have been not proved, the contention that there is no evidence, cannot be accepted.

15. In substance, the Courts below have upon the correct appreciation of evidence recorded findings of facts based on objective material. Such findings of facts in the absence of any jurisdictional error or patent infirmity

are not open for interference in exercise of revisional jurisdiction.

16. The Civil Revision Application, thus, stands dismissed.

(N.J.JAMADAR, J.)