



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 221 OF 2025

Shaikh Rizwan Shaikh Mubarak .. Applicant

Versus

Sayyed Iftaqar Hussain Sayyad
Zulfekar .. Respondent

Shri Namit S. Muthiyan, Advocate for the Applicant.
Shri N. E. Deshmukh, Advocate for the Respondent.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR ORDER ON : 04.02.2026
ORDER PRONOUNCED ON : 12.02.2026

FINAL ORDER :

. Heard both sides.

2. Applicant is challenging order dated 16.09.2025 passed below Exhibit 93 in R.C.S. No. 830 of 2019. He is plaintiff in the suit filed for injunction. The respondent is the defendant/ counter claimant filed for eviction under the provisions of the Maharashtra Rent Control Act (for the sake of brevity and convenience hereinafter referred as to the “Rent Act”). The counter claim is sought to be rejected by invoking powers under Order VII Rule 11 of the Code of Civil Procedure (for the sake of brevity and convenience hereinafter referred as to the “C.P.C.”).

3. Learned counsel Mr. Namit Muthiyan appearing for the applicant submits that there was no cause of action and no right to sue is available to the respondent – counter claimant. It is submitted that his client is holding over and suit for eviction is not maintainable. It is further submitted that the suit ought to have been filed before the Civil Judge Junior Division and Civil Judge Senior Division has no jurisdiction.

4. Per contra, learned counsel Mr. N. E. Deshmukh for the respondent submits that under Section 33 of the Rent Act, Civil Judge Senior Division has jurisdiction to entertain the suit for eviction. It is submitted that by notice dated 01.01.2020, the respondent terminated the tenancy and suit is filed under the Rent Act for eviction. The say filed to application Exhibit 93 shows that suit is filed under the Rent Act.

5. I have considered rival submissions of the parties. Applicant has filed suit for injunction in the Court of Civil Judge Senior Division. The counter claim filed by the respondent in the suit shows that the shop premises admeasuring 120 square feet was given on rent initially for a period from 20.06.2011 to 20.05.2012. Thereafter also he was treated to be a tenant. Parties executed agreement for lease for a period from 01.06.2017 to 31.05.2018 and rent of Rs. 5,500/- per month was fixed. The suit is filed on the ground of arrears of rent by issuing notice dated 01.01.2020.

6. The counter claim filed by the landlord in the suit of the tenant for injunction is maintainable. The counter claim discloses cause of action. The respondent is landlord. Applicant's tenancy is terminated. He is in unauthorized possession, but the statutory tenancy continues. Reliance is placed on the judgment of the Karnataka High Court in the matter of Suresh Babu C. Vs. V. Varadarajan reported in *2025 DGLS (Kar.) 362* to buttress that the counter claim for eviction is maintainable in a suit for injunction. It is relevant to notice following paragraphs.

“14. The Hon'ble Supreme Court has authoritatively affirmed this legal position in the landmark judgment *Ramesh Chand Ardawatiya v. Anil Panjwani*, (2003) 7 SCC 350, wherein it was held that when a tenant approaches the Court with a suit for bare injunction without disputing the title or the tenancy, the landlord is entitled to assert his claim for possession in the same proceedings, including through a counter-claim, provided the conditions under Order VIII Rule 6A CPC are fulfilled. The Apex Court further clarified that such a counter-claim is procedurally valid and legally sustainable, as it arises out of the same tenancy relationship which forms the substratum of the suit filed by the tenant.

15. The legislative intent behind incorporating the provision for counter-claims under Order VIII Rule 6A CPC is to avoid multiplicity of proceedings and to enable Courts to adjudicate all interrelated disputes between the parties in a consolidated manner. This procedural mechanism serves the larger object of judicial economy and expeditious disposal of cases. When a tenant approaches the Court invoking its equitable jurisdiction for a decree of injunction to protect possession, it would be both illogical and legally unwarranted to compel the landlord to initiate a separate suit for eviction, especially when the issue of possession and the right to occupy the premises arises from the

very same tenancy arrangement that is the subject of the tenant's injunction suit.

16. Once the tenant admits the jural relationship and does not dispute the termination of tenancy, the landlord is well within his rights to utilize the platform of the tenant's suit to seek recovery of possession by filing a counterclaim. The jurisdiction of the Court to entertain and adjudicate such a counter-claim is not ousted merely because the original suit was instituted by the tenant for injunction simplicitor. Rather, the existence of the tenancy, its termination, and the continuing possession of the tenant together constitute a common thread tying both claims, thereby satisfying the test of commonality of cause of action under Rule 6A. Accordingly, Point No.(ii) is answered in the affirmative."

7. The counter claim and say filed by the respondent to application Exhibit 93 shows that the possession is sought on the grounds available under the Rent Act. It cannot be said that Civil Judge Senior Division, who is seized of the matter has no jurisdiction. By implication of Section 33(1)(c) of the Rent Act, suit is required to be filed before the Civil Judge Junior Division that does not mean that Civil Judge Senior Division does not have jurisdiction to entertain the suit.

8. Reliance is placed by learned counsel Mr. Muthiya for the applicant on the judgment of the Supreme Court in the matter of Amritpal Jagmohan Sethi Vs. Haribhau Pundlik Ingole reported in 2025 *LiveLaw (SC) 400* to buttress that relationship of the landlord

tenant comes to an end on the decree of eviction. The contractual tenancy between the parties is not subsisting. I am unable to be persuaded as to how suit filed before the Civil Judge Senior Division in the form of counter claim is not entertainable.

9. Learned counsel for the respondent Mr. Deshmukh has relied on the judgment of the Coordinate Bench of this Court in the matter of Sukhlal Bhivsan Dhobi Vs. Vinayak Sadashiv Sangale and another reported in *2014 (3) Mh. L. J. 939*. Following are the relevant paragraph :

“10. Keeping in view the Judgment of the Division Bench in the matter of Savitribai (supra), which took support also from the matter of Ranchhodlal Vallabhdas (supra), there is no manner of doubt that where there is Court established of Civil Judge, (Senior Division), as well as Joint Civil Judge, (Junior Division), and the institution is in the Court of Civil Judge, (Senior Division), the Civil Judge, (Senior Division), Joint Civil Judge, (Senior Division) (if such Judge is also there), as well as Joint Civil Judge, (Junior Division), all these Courts have jurisdiction to decide the matter. On institution of the Rent matter in the Court of Civil Judge (Senior Division) he can try it himself, or make it over to Joint Civil Judge (Senior Division) or Joint Civil Judge (Junior Division). It is clear from the Judgments referred, which have interpreted Section 28 of the Bombay Rent Act, that where no Court of Civil Judge, (Junior Division) is there, the Court of Civil Judge, (Senior Division), which has jurisdiction to entertain and try the suit, can try the same and it could be tried by all the Joint Civil Judges, (Senior Division) or by Joint Civil Judge, (Junior Division) to whom the suit may be referred to for disposal by the Civil Judge, (Senior Division) or by the District Judge under Section 23 of the Civil Courts Act or by way of transfer under Section 24 of C.P.C. At (taluka) places where there is Court of Civil Judge (Junior Division) and Joint Civil Judge (Junior Division) and institution is in the Court of Civil Judge (Junior

Division), such matters on institution can be tried by Civil Judge (Junior Division) as well as Joint Civil Judge (Junior Division) to whom the matter is made over. In view of this, under Section 31 of the Maharashtra Rent Act, Courts specified in Sections 28 and 29 as interpreted in the Judgments of the Division Bench and Full Bench, referred above, shall follow the prescribed procedure in trying and hearing suits, proceedings, applications and appeals and in executing orders made by them.”

I am of the considered view that in view of the above position suit in the present matter is tenable.

10. Further reliance is placed on the judgment of this Court in the matter of Devidas Mohanlal Gupta and others Vs. Ajesh Suresh Sarvaiyya reported in *2007(1) Mh.L.J. 362*. This judgment will not help the respondent.

11. The submissions regarding tenancy of holding over and procedure to be followed for termination of tenancy can be dealt with during the course of trial. These submissions have no potential for rejection of the plaint.

12. I do not find that any error of jurisdiction or illegality is committed by the Trial Court in rejection application Exhibit 93. The civil revision application is rejected.

[SHAILESH P. BRAHME J.]