

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 59 OF 2026

Smt. Najhat A. Salam Aazmi

VERSUS

Late Bapusaheb Babaji Umbarkar and ors

Mr. Rushikesh Barge, advocate for the Applicant

Mr. Chetan Patil a/w Mr. Gajraj Mali, advocate for Respondent No. 3

Mr. Amit Sale, advocate for Respondent No. 4

CORAM : SACHIN S. DESHMUKH, J.

DATE : 29th APRIL, 2026.

P. C. :

1. By this Revision Application, the Applicant raises challenge to the Judgment and Decree rendered by District Judge 1, Wai, in Regular Civil Appeal No. 195/2023 arising out of the Judgment and Decree dated 08/08/2008 rendered by learned Civil Judge Junior Division, Wai in Regular Civil Suit No. 80/1995.

2. The Respondents are the legal heirs of the original Plaintiff who had instituted the Regular Civil Suit No. 80/1995 before the Civil Court seeking possession and mesne profit against the Defendant/Petitioner herein (Hereinafter the parties shall be referred to by their original status in the Suit).

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3. It is the case of the Plaintiff, owner of the house 'Om Niwas' standing on Plot No. 494/6/19 located within the municipal limits of Panchgani, (Hereinafter referred to as 'suit property') inducted the Defendant as tenant. However, since the Defendant was irregular in paying the dues, the Plaintiff through the competent Court got declared the rent amount as Rs. 183.33 paise per month. Against the same, the revision was pending before the Satara, Court.
4. It is asserted in the plaint that during the period of February 1984 to 1995, the defendant failed to pay the rent arrears as declared by the competent Court and that the defendant was only inducted as tenant till the year 1991. Since, the defendant left the premises without any notice and kept the premises locked for more than six months, the cause of action for eviction arose.
5. Consequently, the notice dated 27.06.1994 for eviction was sent to the defendant. However, the defendant having left suit premises, the notice returned unserved. Accordingly, the suit came to be instituted against the defendant.
6. In response, the defendant contested the suit denying all the assertions in the plaint and asserted that due to illness, she had left

the house premises and the suit is instituted by taking undue advantage of the such absence. Except the suit property, the defendant had no other residence and prayed for the dismissal of the suit.

7. After undertaking a long drawn trial, the Civil Court held that the plaintiff had failed to prove the bonafides and reasonable requirement for the suit property under Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereafter referred as the “Act of 1947” as well as failure to prove that the defendant was a non user of the property for more than six months as required under Section 13(1)(k) of the Act of 1947, while dismissing the suit by the judgment and order dated 08.08.2008.

8. Aggrieved by the same, the plaintiff through legal heirs preferred a Regular Civil Appeal no. 195 of 2023 (Old Reg. Civil Appeal no. 413/2012) before the District Judge-1, Wai District Satara, which is allowed by the judgment and order challenge, directing the defendant to vacate the suit property and hand over the possession to the plaintiff within a period of three months from the date of judgment. Further directing the defendant to pay arrears of rent which was in existence for the period immediately prior to

the institution of suit at Rs 183.33 paise per month along with interest of 6% per month till actual realisation. And also directed an inquiry into mesne profit against the defendant as per the Order XX Rule 12 of the Civil Procedure Code (CPC). Resultantly, the Defendant is before this Court.

9. Learned Counsel for the Petitioner/Defendant submits that the Appellate Court has failed to properly appreciate the law, facts and evidence on record. The Petitioner had duly explained the intermittent absence owing to the sickness producing medical prescription and evidence of children. The Appellate Court erred by drawing adverse inference against the defendant for not deposing before the Court, specifically when the Power of attorney holder/son of defendant was duly examined on her behalf. The Plaintiff had failed to show the bonafide requirement. As such, the provisions of the Act of 1947 were not duly considered and prayed to allow the Petition.

10. Mr. Chetan Patil learned counsel for Respondent No. 3 and Mr. Amit Sale, learned counsel for Respondent No. 4 have opposed the Petition and supported the order under challenge.

11. Having heard the submissions from the litigating sides and

upon perusal of the record indicates that there is no dispute regarding the relation of landlord and tenant between the parties. It is a matter of record that the defendant had left the premises and shifted to Bhiwandi in the year 1994-95 by locking the premises.

12. There is no material put forth by the defendant to indicate that an intimation or notice was given to the landlord/plaintiff before leaving the premises for such a considerable period. Consequently, the landlord served an eviction notice on the last known address. Thus, as per Section 27 of the General Clauses Act it could be regarded as deemed service. Resultantly, the suit came to be instituted.

13. Perusal of the order under challenge indicates that despite providing an opportunity, the defendant failed to appear before the Court for adducing the evidence. The ground of mental imbalance and illness was raised by the son of defendant for not effecting the personal examination of the defendant. However, the defendant had executed a power of attorney, thus, the plea of mental imbalance cannot be sustained. Moreover, the assertions of illness and other aspects such as absence during the disputed period were facts, falling under the personal knowledge of the defendant. Thus, the

Appellate Court rightly drew an adverse inference against the defendant.

14. In view of the aforesaid discussion, the plaintiff had duly proved that the defendant was a non user of the suit property for more than six months as per the Section 13(1)(k) of the Act of 1947. The said fact is also further corroborated by the non service of notice and through the evidence of the other neighbors.

15. Thus, the Appellate Court rightly appreciated the cause of action and dealt with the consequent aspects of pending arrears of rent. Hence, order under challenge does not warrant interference.

16. Resultantly, the petition is dismissed. No order as to costs.

[SACHIN S. DESHMUKH, J.]