

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

**WRIT PETITION NO. 11443 OF 2025**

1. Kolhapur Municipal Corporation  
Through Commissioner, Kolhapur
2. Commissioner, Kolhapur Municipal  
Corporation, Kolhapur
3. Superintendent,  
Encroachment Department,  
Kolhapur Municipal Corporation,  
Kolhapur .. Petitioners

Versus

1. Dattatraya Vithoba Aatyalkar,  
Age Major, Occupation Business  
Residing At- Mikat No.45380,  
Near Rajesh Motors, E-Ward,  
Kawala Naka, Kolhapur
2. The Collector,  
Nagala Park, Kolhapur
3. The State of Maharashtra  
Through Collector, Kolhapur .. Respondents

...  
**INTERIM APPLICATION NO. 11044 OF 2025  
IN  
WRIT PETITION NO. 11443 OF 2025**

Sharvik Properties Pvt. Ltd.  
A private limited company registered  
under the provisions of the Companies Act  
2013 having its registered office at CTS  
No.2113 C/7,8,21 and 22, E-Ward,  
Ole Pune Banglore Road,  
Rajesh Motors Bus Stop, Kolhapur  
Through its Authorized Representatives  
Mr. Rahul Devappa Bhanuse, Age 38 years,  
Occu. Service, Residing at At post  
Ghunki, Taluka Hatkanangale, Kolhapur .. Applicant

Mr. Abhijeet Adgule, Advocate for Petitioners/defendants and Respondents/Corporation in interim application;

Mr. Yuvraj Narvankar and Mr. Poras Shah, Advocates for Applicant in Interim Application;

Mr. Sandeep S. Kargave, Advocate for Respondent No.1/Plaintiff;

Mr. Sanjay D. Rayrikar, A.G.P. for Respondents No.2 and 3/State

**CORAM : SACHIN S. DESHMUKH, J.**

**DATE : 27-04-2026**

**JUDGMENT:-**

1. Rule. Rule made returnable forthwith. Heard finally at the stage of admission.
2. The petitioner/Corporation raises challenge to the judgment and order rendered by the District Judge-5, Kolhapur, in Miscellaneous Civil Appeal No.316 of 2023 dated 03.07.2025, thereby setting aside the order below Exhibit-5 rendered by the learned Civil Judge, Senior Division, Kolhapur, in Regular Civil Suit No.792 of 2023, dated dated 30.11.2023.
3. The petitioners are original defendants in the suit, instituted by respondent No. 1 (original plaintiff) before the Civil Court for declaration and permanent injunction. The Respondent no. 2 to 3 are formal parties. For the sake of convenience, the parties are hereinafter referred to by their original status in the suit.
4. The plaintiff operated a tea stall on property owned by the

Kolhapur Municipal Corporation (defendant No.1) since 1984, claims ownership on the basis of adverse possession, supported by municipal licenses, utility records, and property tax payments. The plaintiff presented Regular Civil Suit for declaration and injunction following the demolition by the defendants in August 2023. It is further alleged that, despite the pending suit, the defendants, purportedly acting under the influence of the Collector (Defendant No. 4) to benefit a private developer, vandalized the plaintiff's cabin without notice. Having repaired the structure and resumed business, the plaintiff sought a declaration of title by adverse possession and a permanent injunction against further interference. The defendants contested the suit by presenting their written statement.

5. In the *interregnum*, the trial court rejected the plaintiff's application for interim injunction at Exhibit-5. Aggrieved by this rejection, the plaintiff preferred an appeal. The appellate court, by the judgment and order under challenge, allowed the appeal. Aggrieved by decision of appellate court, defendants 1 to 3 have approached this Court as Petitioners.

6. Learned counsel for the petitioners (defendants No.1 to 3) submits that the impugned judgment and order are unsustainable in law. It is contended that the plaintiff is a mere encroacher

whose license, originally issued in 1984, expired in 1993 and was never put to renewal. The renewal application presented after two decades in 2023 has been rejected, and the Corporation removed the unauthorized structure. The Petitioners further contend that the trial court declined to exercise its discretion by denying relief based on the plaintiff's status. It is submitted that the first appellate court failed to consider the relevant statutory provisions and the plaintiff's conduct; therefore, the appellate order deserves to be quashed and set aside.

7. Conversely, learned counsel for the plaintiff supports the appellate order. It is argued that the plaintiff was initially inducted into the premises by the Corporation; however, following the expiration of the license, the plaintiff has maintained continuous possession for over 30 years. The plaintiff asserts that this long standing, uninterrupted occupation culminates into adverse possession and in absence of following due process, a claim upheld by the First Appellate Court in granting protection.

8. In the process, the learned counsel for plaintiff relies upon the following precedents regarding adverse possession:-

**(i) *Mansharam Mirchumal Sangtani vs. Dhule Nagar Palika (Municipal Council), Dhule, 1994 Mh.L.j. 806,***

**(ii) *Balwant Chatrabhuji Thakkar vs. Commissioner, Municipal Corporation of Gr. Mumbai and others,***

**2017(2) Mh.L.J. 601;**

**(iii) Rame Gowda (dead) by L.Rs. vs. M. Varadappa Naiu (Dead) by L.Rs. and another, (2004) 1 SCC 769;**

**(iv) Ravinder Kaur Grewal and others vs. Manjit Kaur and others, (2019) 8 Supreme Court Cases 729.**

9. The learned AGP appearing for the State (Respondent Nos. 2 and 3) along with the learned counsel for the Intervener opposed the case of plaintiff.

10. Upon hearing the respective counsel and perusing the record, it is, *prima facie*, evident that the plaintiff held a hawker's license from 1984 to 1993. Although the plaintiff failed to renew this periodical license, the premises admittedly belong to the Corporation, and the plaintiff's initial entry was purely permissive.

11. The plaintiff's plea of adverse possession based on 30 years of occupation lacks merit, in the wake of the induction of plaintiff in the possession of premises was under a license, it remained permissive in nature; a licensee cannot claim adverse possession against the licensor, merely because the license was not regularized. Statutory protection is reserved for authorized occupants, and the plaintiff, having failed to produce a valid renewed license, cannot claim such status.

12. It is the settled position of law that permissive possession cannot be construed as adverse possession. Possession initiated with permission remains permissive and cannot become adverse unless a hostile intent (*animus*) is explicitly expressed and brought to the owner's knowledge, as held by the Supreme Court in ***A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam* (2012) 6 SCC 430.**

13. Thus, the first appellate court's finding that the removal of the structure was contrary to law ignores the plaintiff's lack of legal authorization. Consequently, the appellate court's conclusion is perverse and unsustainable as it grants protection to an unauthorized occupant.

14. Apart from these considerations, the Trial Court correctly identified the core of the issue and properly declined to exercise its discretion in favor of the plaintiff. It was not within the Appellate Court's jurisdiction to substitute its own findings for those of the Trial Court.

15. It is a settled principle of law that where the trial court and the Courts below have concurrently declined to exercise discretion in favour of the Petitioner, this Court would be cautious to interfere, particularly in view of the judgment of the Honourable

Apex Court, in ***Wander Limited And Another vs. Antox India P. Ltd. 1990 (Supp) SCC 727***, particularly, in paragraphs No.13 and 14, which read thus;

"13. On a consideration of the matter, we are afraid, the Appellate Bench fell into error on own important propositions. The first is a misdirection in regard to the very scope and nature of the appeals before it and the limitations on the powers of the Appellate Court to substitute its own discretion in an appeal preferred against a discretionary order. The second pertains to the infirmities in the ratiocinations as to the quality of Antox's alleged user of the Trade-Mark on which the passing-off action is founded. We shall deal with these two separately.

14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view

may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in *Printers (Mysore) Private Ltd. v. Pothan Joseph* :

These principles are well established, but as has been observed by Viscount Simon in *Charles Oseption & Co. v. Johnston* the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case."

16. Apart from the aforesaid aspect and considering the sequence of events, the Corporation undertook the removal of the structure on 10.08.2023, while the suit was not presented until 18.08.2023. Subsequently, on 29.08.2026, the plaintiff filed an application seeking *status-quo ante*, after the trial court had already rejected the initial prayer for interim relief.

17. This sequence of events corroborates the Corporation's specific pleading putforth in paragraph 19 of its written statement, that the plaintiff had been dispossessed prior to the institution of the suit. Further, the first appellate court erred in its interpretation of Section 81(B) of the Act of 1949. While the statute outlines procedures for those in authorized occupation of Corporation premises, such protections do not extend to a plaintiff whose possession, lacking a valid renewal of license or authorization, is inherently unauthorized.

18. Consequently, the Appellate Court improperly applied notice requirements where no such entitlement existed. The Appellate Court failed to recognize that the enforcement action was completed before the matter became *sub judice*, thus, I am of the considered view that the First Appellate Court erred in its judgment, while setting aside well-reasoned order of the trial court.

19. Insofar as the precedents relied upon by the learned counsel for the plaintiff are concerned, same being distinguishable on facts, lend no support.

20. Hence, the following order:-

ORDER

- (i) The writ petition is allowed in terms of prayer clause "b".
- (ii) The judgment and order rendered by the District Judge-5, Kolhapur, in Miscellaneous Civil Appeal No.316 of 2023 dated 03.07.2025, thereby reversing the order below Exhibit-5 rendered by the learned Civil Judge, Junior Division, Kolhapur, in Regular Civil Suit No.792 of 2023, dated dated 30.11.2023, is quashed and set aside.
- (iii) Rule made absolute.
- (iv) At this juncture, considering the peculiar facts and circumstances of this case, the plaintiff's request to continue the interim order does not warrant consideration. Accordingly, the request is rejected.

- (v) In view of the order in writ petition, Interim Application No.11044 of 2025 does not survive and accordingly disposed of.
- (vi) Needless to state that the observations rendered herein above, are confined to decision in relation to interlocutory injunction, the trial Court shall not be influenced by the same.

[SACHIN S. DESHMUKH. J.]

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