

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.476 OF 2024

Shakil Ahmed Mohammed Safi Ansari ...Applicant

Versus

Mr. Abdul Salim Mustar Shaikh & Ors. ...Respondents

Mr. Kaustubh Thipsay a/w Ms. Shivani Sanjay Samel, for Applicant.

CORAM:

MADHAV J. JAMDAR, J.

PRONOUNCED ON

5th JANUARY 2026

UPLOADED ON

9th JANUARY 2026

JUDGMENT:

1. Heard Mr. Thipsay, learned Counsel appearing for the Applicant.

2. By this Civil Revision Application, challenge is to the legality and validity of the Judgment and Decree dated 26th July 2012 passed by the learned Judge, Small Causes Causes Court, Mumbai in R.A.E. Suit No. 103/139 of 2010 and of the Judgment and Decree dated 13th February 2018 passed by the learned Appellate Bench of Small Causes Court, Mumbai in Appeal No. 38 of 2012.

3. It is the main submission of Mr. Thipsay, learned Counsel appearing for the Applicant that in view of the law laid down by the Supreme Court in the case of **Celina Coelho Pereira (Ms.) Vs.**

Ulhas Mahabaleshwar Kholkar¹, the landlord in order to prove ground of subletting has to establish two ingredients namely parting with possession of the tenanted premises by the tenant in favour of a third party with exclusive right of possession and that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent. He submits that although in the plaint, it has been specifically averred that the present Applicant i.e. Defendant No.1 has given suit premises to Defendant No. 2 on leave and license, the landlord has failed to produce these documents and failed to prove the same. He therefore submits that the ground of subletting is not proved. He pointed out averments in the written statement and the relevant oral depositions. He submits that the findings recorded by both the Courts that the Respondent-original landlord has proved subletting is not in accordance with law and evidence on record. He therefore submits that the impugned Judgments and Decrees be quashed and set aside.

4. Before considering submissions of Mr. Thipsay, learned Counsel of the Applicant, it is necessary to set out paragraph No.

¹ 2010 (1) SCC 217

25 of the decision of the Supreme Court in the case of **Celina Pereira** (supra), which reads as under:

“25. The legal position that emerges from the aforesaid decisions can be summarised thus:

(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(iii) The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(iv) If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners,

the tenant may not be said to have parted with possession.

(v) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

(vi) In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises and in that case a presumption of sub-letting may then be raised and would amount to proof unless rebutted.”

(Emphasis added)

5. Thus what the Supreme Court has held is that in order to prove grant of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, parting with possession of tenanted premises or part of it by the tenant in favour of a third party with exclusive right of possession, and that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent. It has been further held by the Supreme Court that the initial burden of proving sub-letting is on the landlord but once the landlord is able to establish that a third party is in exclusive possession of the

premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession of the tenanted premises. It has been further held by the Supreme Court that initial burden lying on the landlord would stand discharged by adducing *prima facie* proof of the fact that a party other than the tenant was in exclusive possession of the premises and in that case a presumption of sub-letting may then be raised and would amount to proof unless rebutted.

6. In view of the above legal position, it is necessary to set out admitted factual aspects :

(i) Admittedly the suit summons has been served on the Defendant No.2 i.e. sub tenant on the address of the suit premises. i.e. Room No. 1, Ground Floor, Shaikh Noor Building No. 130AA, Pipe Road, Kurla (West), Mumbai – 400 700

(ii) Admittedly, the suit summons has been served on the Defendant No.1 i.e. the tenant not at the suit premises but at

White House Building, Kurla Sabji Market, Near 'L' Ward
BMC Office, Kurla (West), Mumbai 400 070.

7. In view of above admitted position that the suit summons has been served on the Applicant i.e. Defendant No.1 (tenant) at some other address than the suit premises and that same has been served on Defendant No. 2 (sub-tenant) at the suit premises, the presumption of sub-letting arises and the burden is on the Applicant to prove that the premises are not subletted to the Defendant No.2.

8. It is necessary to scrutinize the evidence on record and particularly cross-examination of the Defendant No.1 in view of above legal position. The relevant cross-examination on page-76 is as follows:

“Suit premises consists of one room admeasuring 180 sq. ft. It is correct to say that after plaintiffs became owner and landlord of suit property, I started giving rent to the plaintiff. It is correct to say that the previous owner was having rent collector but, plaintiffs have no rent collector. Defendant no.2 is my relative and therefore I know him. Defendant no. 2 is residing at Varsova. I do not know since when defendant no.2 is residing at Varsova. Defendant no.2 is having wife, two daughters, two sons. I had allowed defendant no.2 to reside in suit premises as he came for medical treatment. Defendant

no.2 came to reside in suit premises in the month of December 2009 and left the suit premises in the month of April 2010. It is correct to say that the writ of summons of present suit is personally served on defendant no. 2 at the address of suit premises. I cannot assign reason why it is not mentioned in written statement that defendant no.2 was residing in suit premises as he came for medical treatment. It is not correct to say that when defendant no. 2 was residing in suit premises I was not residing in suit premises. It is not correct to say that I am no am not residing in suit premises but used to reside in White House Building. It is true to say that upon vacating the suit premises by defendant no. 2 my daughter and son-in-law are residing in suit premises. I am not going to examine my daughter and son-in-law as a witness. Defendant no.2 will not come in court to depose on his behalf.

Now, I am shown reply dated 02/07/2009 issued by my Advocate Exhibit-14. Para 5 and 6 in reply Exhibit 14 are not correct.”

(Emphasis added)

9. Thus, the above cross-examination clearly shows that the suit premises is consisting of only 1 room admeasuring 180 sq. ft. The Defendant No.2 has been allowed by Defendant No.1 to reside in the suit premises with his family i.e. wife, two daughters and two sons. The Writ of Summons of suit was served on Defendant No.2 at the address of the suit premises. The reason given that the Defendant No.2 was staying in the suit premises for medical treatment is not mentioned in the written statement. The record

further indicates that the suit summons has been served on Defendant No.1 at some other address i.e. at White House Building.

10. The further cross-examination of Defendant No.1 clearly shows that although he has stated that his daughter and son-in-law are residing in the suit premises, however, he has stated that he is not going to examine them as witness. He has also specifically stated that the Defendant No.2 would not lead any evidence. Thus, it is very clear that the Defendant has not been able to prove that the Defendant No.2 is not the sub-tenant.

11. The Supreme Court in the case of **Celina Pereira** (supra), has specifically held that after initial burden of proving sub-letting is discharged by showing that a third person is in exclusive possession of the tenanted premises, the onus shift to the tenant to prove the nature of occupation of such third party. It is for the tenant to prove the nature of occupation of such third party and that the tenant continues to hold legal possession in tenancy premises. The subsequent vacation of the suit premises by the sub-tenant is of no consequence.

12. Perusal of record clearly shows that initial burden has been discharged by the landlord, however, the tenant has failed to prove that the Defendant No.2 is allowed to occupy the suit premises with Defendant No.1 for the purpose of medical treatment of Defendant No.2 and further that the Defendant No.1 continues to hold legal possession in tenancy premises. Both the Courts have concurrently held that the ground of subletting is proved. Nothing has been pointed out that the said finding is not in accordance with the evidence record.

13. One more aspect, which is required to be taken into consideration is that the Defendant No.1 in his cross-examination has clearly stated that the reply dated 2nd July 2009 issued by his Advocate and particularly paragraph Nos. 5 and 6 of the said reply are not correct. The said paragraph Nos. 5 and 6 are set out hereinbelow for ready reference:

“5. My client is shocked to receive your notice since he is perplexed regarding your Identity and status to write this or give notice.

6. My client further says that he is lawful tenant of Mr. SK. M. Harif SK. M. Noor Chawl and sayss that you have issue this notice without any local standi and without any legal rights.

14. Thus, it is clear that apart from sub-letting, in fact the Applicant has denied the title of the Respondent i.e. landlord. This is relevant as in the cross-examination, it is specifically stated by the Applicant i.e. Defendant No.1 that after plaintiffs became owner and landlord of suit property, he started giving rent to the plaintiff.

15. In any case, both the learned Trial Court as also learned Appellate Court has concurrently held that the ground of sub-letting is proved. In the facts and circumstances, and in view of the pleadings and the evidence on record, no case is made out for interference in the concurrent findings recorded by both the Courts.

16. Accordingly, the Civil Revision Application is dismissed, however, with no order as to costs.

17. At this stage, Mr. Thipsay, learned Counsel for the Applicant seeks stay of this Order, however as both the Courts have concurrently passed the decree on the ground of subletting, and in view of the conduct of the Applicant of even denying the title of

the landlord, no case is made out for grant of stay. Accordingly, the said request is requested.

(MADHAV J. JAMDAR, J.)