

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 752/2014

WITH

INTERIM APPLICATION NO. 383/2020

WITH

INTERIM APPLICATION NO. 8669/2024

WITH

CIVIL APPLICATION NO. 318/2019

WITH

INTERIM APPLICATION NO. 1277/2020

WITH

INTERIM APPLICATION NO. 12609/2025

IN

CIVIL REVISION APPLICATION NO. 752/2014

SHRI KRISHNAKUMAR K ASHAR

..... APPLICANT

VS

ARCHIE JOHN VAREL & OTHERS.

..... RESPONDENTS

WITH

INTERIM APPLICATION NO. 1279/2020

WITH

CIVIL APPLICATION NO. 130/2019

IN

CIVIL REVISION APPLICATION NO. 752/2014

MRS. VALERIE C. GODINHO AND ORS.

..... APPLICANTS

VS

SHRI. KRSIHAKUMAR KARSANDAS ASHAR

..... RESPONDENTS

WITH

INTERIM APPLICATION NO. 19237/2022

**IN
CIVIL REVISION APPLICATION NO. 752/2014**

CLYDE ARCHIE VAREL

..... APPLICANT

VS

SHRI KRISHNAKUMAR K ASHAR

..... RESPONDENT

Adv. Kailas Dewal a/w. Adv. Yash Dewal, Adv. Ashwini Kulkarni i/b. Adv. Mohit Bhansali for the Applicant.

Adv. Tejas Dande a/w. Adv. Trushna Shah, Adv. Bharat Gadhavi, Adv. Parth Talekar, Adv. Tanishka Chavan, Adv. Satyajeet Salve i/b. Adv. Akshay Pawar for the Respondent No.1/3.

Adv. Manoj P. Mhatre for the Respondent Nos. 2/2 to 2/6.

Clyde Varel - Respondent No. 1/3 present.

CORAM : RAJESH S. PATIL, J.

DATE : 7 APRIL, 2026

JUDGMENT :-

- 1) By the present civil revision application filed under Section 115 of the Civil Procedure Code, 1908 the applicant, who is the original defendant in a Rent Act eviction suit challenges the impugned judgment and decree passed by the Appellate Bench.
- 2) I have heard the counsel of both the sides and with their help, I have gone through the documents on record.
- 3) According to Mr.Dande - the advocate appearing for the respondent no.1-original plaintiffs, suit was filed on the grounds of

unauthorized construction, subletting, change of user, *bona fide* requirement and arrears of rent. The said suit was dismissed by the Trial Court by the judgment and order dated 30 June, 2009.

4) It is Mr.Dande's case that both the plaintiffs jointly filed an appeal before the Appellate Authority and during the pendency of the appeal, the plaintiff no.2 died. Hence, the legal heirs were brought on record. The appeal was answered in favour of the plaintiffs and the judgment passed by the Trial Court was set aside.

5) Being aggrieved by the judgment and order passed by the Appellate Court dated 3 May, 2014, the present applicant has filed the present civil revision application under section 115 of the CPC.

6) Mr.Dewal appearing for the applicant submits that during the pendency of the civil revision application before this Court, by a conveyance deed dated 22 April, 2016, the applicant-tenant purchased 50% share of the building in which suit premises is situated from the legal heirs of the deceased plaintiff no.2. Hence, he became the owner of the 50% of the suit premises.

6.1) Mr.Dewal referred the documents being communication dated 10 September, 1979 written by the plaintiff no.1 to the plaintiff no.2 thereby directing the plaintiff no.1 not to proceed with filing of any suit against the tenant, who is the applicant herein. This

document was written before filing of eviction suit.

6.2) Mr.Dewal further referred to various documents and said that even for filing of a suit, there was an objection raised by the plaintiff no.2. However, by playing fraud, the suit for eviction was filed.

7) The original plaintiff no.1, now the respondent no.2 is represented by advocate Mr.Mhatre, who has filed two interim applications in the present proceedings. The first civil application numbered as Civil Application No. 130 of 2019, he seeks a prayer that Special Civil Suit No. 217 of 2002 be treated as disposed of as withdrawn as far as applicants herein are concerned and thereafter second interim application which was filed, numbered as Interim Application No. 4 of 2020, seeks to transpose him as defendant and under the provisions of Order 41 Rule 25 of C.P.C., to frame an issue and remit the matter back to the Trial Court since there is a ground of separation of agreements as the plaintiff no.1 had practiced fraud upon the Court. And hence, further to withdraw the earlier Civil Application No. 130 of 2019.

7.1) Mr.Mhatre further submits that his client does not want to continue with the eviction proceedings against the tenant and the eviction proceedings be treated as withdrawn.

8) Supreme Court in the judgment of ***Mohinder Prasad Jain vs. Manohar Lal Jain (2006) 2 SCC 724*** has held that one of the co-owner can file a suit on behalf of other co-owner. However, if a co-owner objects to such eviction proceedings, the same will be relevant.

Paragraph nos. 10 and 11 of the said judgment reads as under :-

10. This question now stands concluded by a decision of this Court in ***India Umbrella Mfg. Co. v. Bhagabandei Agarwalla (2004) 3 SCC 178*** wherein this Court opined: (SCC p. 183, para 6)

"6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See *Sri Ram Pasricha v. Jagannath and Dhannalal v. Kalawatibar*, SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the

tenant comes to an end by act of parties or by operation of law."

11. A suit filed by co-owner, thus, is maintainable in law. It is not necessary for the co-owner to show before initiating the eviction proceedings before the Rent Controller that he had taken option or consent of the other co-owners. However, in the event a co-owner objects thereto, the same may be a relevant fact. In the instant case, nothing has been brought on record to show that the co-owners of the respondent had objected to eviction proceedings initiated by the respondent herein. The submission of the learned counsel for the appellant to the effect that before initiating the proceedings, the respondent was required to show that he had experience in running the business in Ayurvedic medicines, has to be stated to be rejected. There is no law which provides for such a precondition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or preconditions without fulfilment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicines, no qualification is prescribed. Experience in the business is not a precondition under any statute. Even no experience therefor may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his own purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.

[Emphasis supplied]

9) Therefore, in case of *Mohinder Prasad Jain* (supra), the Supreme Court relied upon the earlier judgment of *India Umbrella Mfg. Co.*(supra) and held that if by subsequent event, one of the co-

owner objects to filing of the suit, the eviction proceedings comes to an end.

9.1) Considering the dicta of the Supreme Court in the case of ***Mohinder Prasad Jain*** (supra) one thing is clear that, where there are two co-owners and an eviction suit is filed against a tenant by one of the co-owner, such a suit is maintainable and he need not have a written consent from the other co-owner. However, as regards filing/continuing eviction proceedings, in my view, following situations may arise :

- (a) If one considers a situation where both the co-owners have jointly filed a suit against a tenant, however, for any reason whatsoever, if one co-owner says that he does not wish to proceed with the eviction proceedings at any stage, then the eviction proceedings cannot be continued against the tenant.
- (b) In a situation where there are two co-owners who have jointly filed an eviction suit against a tenant and subsequently one of the owner sells his share to a third party, who is not the tenant and the third party who purchases 50% share in the property after the conveyance is transferred in his favour, decides not to proceed with the eviction proceedings against the tenant, even

in such a situation, in my view, the eviction proceedings cannot be proceeded further against the tenant.

- (c) In another situation where there are two co-owners and the 50% share of one of the owner at any stage of the eviction proceedings is purchased by the said tenant by way of a conveyance, in my opinion, the eviction proceedings can't be proceeded against the said tenant. As on one hand he becomes 50% owner and on another hand his tenancy continues.

9.2) I have considered the above three situations where there are only two co-owners, however the co-owners can be more than two also. In such a situation, even if one of the co-owner's share is purchased by the tenant and the said now a co-owner out of many, decides not to proceed with the eviction proceeding, in my view even in such a situation the eviction proceedings can't be proceeded further at whichever stage it may be.

9.3) If sitting tenant solely purchases the entire ownership right of the tenanted premises by way of registered conveyance, he becomes absolute owner and his tenancy rights qua the premises gets converted into superior right that of ownership.

9.4) In the light of above analysis, in my judgment once a

tenant also becomes a co-owner, he is in a dual capacity, that of the ownership to the extent of share purchased and tenancy to the extent of his tenancy agreement as on date. As soon as he purchases a part of ownership right, another co-owner can't file or continue eviction proceedings under Rent Act against him qua the tenancy premises.

9.5) In the present proceedings, though there is dispute between the parties, whether both the plaintiffs had jointly filed a plaint for eviction, however, in my view if one of the plaintiff has sold his right to the sitting tenant, the tenant's right in the property from the tenancy enhances to that of ownership and once the tenant becomes owner, may be 50%, he will have right to not proceed with the eviction suit. In fact the earlier owner who has sold 50% share and is disputing his signature on the plaint, he also had addressed a letter much before the suit was filed to his brother (co-owner) that he does not wish to file suit against the tenant, and even today though he has sold his share, he has stated before me that he does not want to proceed with the eviction proceedings, therefore in view of the law laid down by the Supreme Court in case of ***Mohinder Prasad Jain*** (supra), the eviction proceedings cannot be proceeded further. So also, it will be pertinent to note in the present proceedings as submitted before me by the advocate appearing for the applicant-

earlier tenant and now 50% owner of the suit premises that, his client has already filed a partition suit being a owner of the 50% of the share, seeking partition from the respondent.

10) In my view, the ratio laid down by the judgment in case of ***Mohinder Prasad Jain*** (supra) is squarely applicable to the present proceedings. Hence, civil revision application filed by the original tenant and now 50% landlord, needs to be allowed.

11) At this stage, Mr. Clyde Archie Varel, respondent no.1, requested this Court that he may be permitted to make his submissions.

12) Mr. Varel has handed over two authorities of the Supreme Court viz. (1) ***P Anjanappa (D) by LRs. vs. A. P Nanjundappa & Ors.***, reported in ***2025 SCC OnLine SC 2358*** and (2) ***Alka Shrirang Chavan & Anr. vs. Hemchandra Rajaram Bhonsale & Ors.***, reported in ***2026 SCC OnLine SC 55***. He submitted that the law laid down in these authorities is applicable in present proceedings.

13) In my view, both these judgments are not applicable to the present proceedings, since in the first case, the Supreme Court was considering the validity and effect of two release deeds and in the second case the Supreme Court was considering whether the decree

for specific performance in suit was executable, when decree holder didn't acquire title by sale deed executed by Court Commissioner. Hence, the facts in both the judgments are quite different which will not have any bearing in the present proceedings.

14) In the present proceedings, I am dealing with a situation where there is a landlord-tenant dispute and during the pendency of the proceedings u/s. 115 of the Code of Civil Procedure, the tenant has purchased 50% share of the land.

15) Therefore, in my view, this civil revision application needs to be allowed.

16) **Civil revision application stands allowed.** The judgment and decree passed by the Appellate Court is quashed and set aside. The impugned judgment and decree passed by the Trial Court stands confirmed.

17) I have been informed that the applicant-original tenant had deposited certain amounts in this Court in view of the application preferred according to the judgment of the Supreme Court in the case of *Atmaram Properties vs. Federal Motors, 2005 SCC (1) 705*.

18) Since the amount has been deposited by the applicant – original tenant and today the applicant has succeeded in the present civil revision application, the said amounts needs to be returned back

to the applicant – original tenant alongwith accrued interest.

19) Mr. Varel has opposed this application of withdrawal of the amount by the applicant – original tenant.

20) I have seen the order passed on 20 July, 2015 by the Single Judge of this Court which directs the applicant – then tenant to deposit market rent in this Court. Paragraph no.1 of the said order reads as under:-

1. The learned Advocate for Applicant, on basis of instructions from the son of the Applicant, who has authority to take decisions in the matter, states that during the pendency of this Civil Revision Application, the Applicant shall pay to the Respondent No.1 landlord compensation at the rate of Rs.50,000/ (Rupees Fifty Thousand Only) per month with effect from 01/02/2015. The first of such payment shall be made on or about 05/08/2015 and payments in respect of the subsequent months shall be made on or before 10th date of each succeeding month. The arrears to be paid on or before 31/08/2015. The learned Counsel for Applicant, on basis of instructions as aforesaid, further states that even if the Applicant succeeds in this Civil Revision Application, the Applicant shall not seek any refund of the compensation of Rs.50,000/ per month which is being paid for use of the suit premises. These statements are accepted as undertakings to the Court.

21) Subsequently during pendency of civil revision application, by a conveyance deed dated 22 April, 2016, the tenant has purchased 50% of the share in the suit premises. Immediately,

thereafter an application was made in the form of Civil Application No.663/2016 whereby the applicant sought refund of the amount which was handed over to the respondent 50% owner of the property. However, this Court by its order dated 2 December, 2016 rejected the said application. The applicant herein who is now 50% owner of the property, filed S.L.P. before the Supreme Court being S.L.P. (Civil) No.3962 of 2017. The said S.L.P. was disposed of by an order dated 9 February, 2017. The said order reads as under:-

UPON hearing the counsel the Court made the following

O R D E R

Heard learned counsel for the petitioner.

Though we are not inclined to interfere with the impugned order, yet we observe that any deposit made by the petitioner shall be subject to the final realization in the Civil Revision Application No. 752 of 2014, which is pending in the High Court of Judicature at Bombay.

With the aforesaid observation, the special leave petition stands disposed of. The High Court is requested to dispose of the civil revision application as expeditiously as possible, preferably within six months.

22) Hence, the Supreme Court very categorically stated that any deposit made by the applicant shall be subject to the final realization in the present civil revision application. The hearing of the civil revision application was expedited. In my view, the order of the

Supreme Court is quite clear. Presuming monies were deposited by the tenant who suffered a eviction decree as per the judgment of *Atmaram Properties* (supra), he was made to deposit monies as market rent with this Court.

23) Today before me Mr. Dewal is not seeking refund of the amount which has already been paid to the respondent, he is only seeking to refund of the monies deposited in this Court after 2017 till date, which is around Rs.60,00,000/-. In my view, once an eviction decree is reversed in a revision application u/s. 115 of the Code of Civil Procedure, the amount deposited by such tenant has to be returned back to him, as he has succeeded.

24) In the present proceeding, as tenant has now become a co-owner and his civil revision application is allowed which arises from eviction proceedings, therefore, I have no doubt that the entire amount deposited by the applicant in this Court along with accrued interest should be returned back to the applicant.

25) In view of the same, Registry to refund the entire amount deposited by the applicant in this Court along with accrued interest to the applicant.

26) Pending civil applications and interim applications also

stand disposed of.

27) All concerned to act on an authenticated copy of this order.

(RAJESH S. PATIL, J.)