

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 806 OF 2024
WITH
INTERIM APPLICATION NO. 1147 OF 2025

M/s Shree Ganesh Engineering Co & Anr ..Appellants
Versus
Dinesh Rajnikant Trivedi and Ors ...Respondents
Mr. Kishor H Hase, for the Appellant.

CORAM: N. J. JAMADAR, J.
DATE : 6th MAY 2026

ORAL ORDER:

1. Heard the learned Counsel for the Appellant.
2. This Second Appeal is directed against the judgment and decree dated 5th October 2023 passed by the learned District Judge in RCA No. 119 of 2023, whereby the Appeal preferred by the Appellant against judgment and decree dated 5th December 2016 in RCS No. 66 of 2007 passed by the Trial Court, came to be dismissed.
3. Respondent No.1 had instituted the suit for recovery of possession of the demised premises and arrears of rent on the ground that the Defendant-Appellant committed default in the payment of the rent and there was unlawful subletting of the demised premises by Defendant No.1 in favour of Defendant No.6.

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4. By a judgment and decree dated 5th December 2016, the Trial Court returned a finding that Defendant No.1 committed default in payment of rent and there was breach of the terms of the Lease dated 12th March 1985 as Defendant No.1 had unlawfully sub-let the demised premises to Defendant No. 6.

5. The learned District Judge found no error in the judgment and decree passed by the Trial Court.

6. The learned Counsel for the Appellant submitted that though the Appellant had not raised ground of bar of limitation in the Written Statement, it was the duty of the Court under Section 3 of the Limitation Act to frame and decide the issue of limitation. It was submitted that since the father of the Plaintiff—the original lessor, passed away in the year 1990, the institution of the suit in the year 2007 was clearly barred by law of limitation. It was further submitted that the Plaintiff after the demise of his father-original lessor did not give a notice to Defendant No.1 and the tenancy was attorned. Therefore, there was no occasion for Defendant No.1 to pay the rent.

7. The submission premised on bar of limitation is wholly misconceived. The demised premises was given by the father of the Plaintiff to M/s Shree Ganesh Engineering Company, a partnership firm under a Lease Deed executed from 12th March 1985. The character of possession of Defendant No.1 was and continued to be that of the lessee

of the demised premises. The fact that the original lessor passed away, did not change the jural relationship between the parties. Hence the contention of Defendant No.1 that after the demise of the original lessor, the period of limitation to institute the suit for recovery of possession of the demised premises commenced cannot be countenanced.

8. The Plaintiff had sought recovery of the arrears of rent for the period of three years prior to the institution of the suit. Thus, the Courts below were justified in holding that the claim for recovery of arrears of rent was also in order.

9. This Court finds that the findings of facts recorded by the Courts below on the point of arrears of rent as well as the breach of the terms of the lease in view of the subletting of the demised premises by Defendant No. 1 to Defendant No. 6, are based on correct appreciation of evidence. Such finding of facts are not open for interference in a Second Appeal. There is no substance in the Second Appeal.

10. The Second Appeal stands dismissed.

11. In view of the dismissal of the Second Appeal, Interim Application stands disposed.

[N. J. JAMADAR, J.]