



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.230 OF 2026

Nadeem Majid Oomerbhoy

...Applicant

V/s.

1. A.E. Irani of Bombay
Inhabitant(since deceased)

2. Aresh Aspandiar Irani of Bombay
(since deceased)

1A. Farida Aresh Irani and Ors.

...Respondents

Ms. Aneesa Cheema with *Mr. Raghav Dharmadhikari* with *Mr. Ganesh Ambekar i/b. M/s. Jariwal Associates* for the Applicant.

Mr. Venkatesh Dhond, *Senior Advocate* with *Mr. Prasad Dani*, *Senior Advocate*, *Mr. Prateek Pansare*, *Ms. Shlesha Sheth* and *Ms. Kalyani Deshmukh i/b. M/s. F2B & Associates* for Respondent Nos.1 and 2.

CORAM: SANDEEP V. MARNE, J.

Dated: 16 APRIL 2026.

ORDER:

1) The Applicant has invoked revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 (**the Code**) for assailing the judgment and decree dated 7 February 2024 passed by the Appellate Bench of the Small Causes Court dismissing A-1 Appeal

No.24 of 2018 and confirming the judgment and decree dated 19 August 2015 passed by the learned Judge, Small Causes Court in R.A.E. Suit No.809/3046 of 1982.

2) The main controversy before the Trial and Appellate Courts was whether the tenancy was created in favour of Defendant No.1 in his personal capacity or in favour of partnership firm-M/s. Bombay Soap Factory for being used by all the partners. Both the Courts have concurrently held that tenancy was in the individual name of Defendant No.1 and since other Defendants are found occupying the suit premises, the decree for eviction is passed on the ground of unlawful subletting. Applicant is one of the partners of M/s. Bombay Soap Factory (**the Firm**) and is aggrieved by the eviction decree. He contends that the tenancy was created for use of the suit premises by the partners of the firm and has accordingly filed the present Revision Application.

3) This is a forty-four-year litigation, which commenced with filing of R.A.E. Suit No.809/3046 of 1982 in the Court of Small Causes at Mumbai by the trustees of Building 'Dhun-Abad' situated at 106, Bhulabhai Desai Road, Bombay-400 036. The Trust is created by Indenture of Trust dated 6 October 1937 in respect of the Dhun-Abad building. Plaintiffs claim ownership in respect of the building 'Dhun-Abad' by virtue of the said Indenture. A flat situated on western side of the building 'Dhun-Abad' comprising of a living room, dining room, four bed rooms, two bathrooms, one store room, kitchen and a servant room are the '**suit premises**'.

4) According to the Plaintiffs, the suit premises were let out to Defendant No.1- Afzal Abdul Sattar on monthly tenancy basis w.e.f. 1 July 1974. Plaintiffs accused Defendant No.1 of unlawful subletting, assigning and transferring his interest in the suit premises to Defendant No.2- Satish C. Goyal. It was alleged that Defendant No.3, who is father-in-law of Defendant No.2, was also found residing in the suit premises with Defendant No.2. According to Plaintiffs, Defendant No.1 had stopped occupying the suit premises and had acquired alternate premises at Court View building, Maharshi Karve Road, Mumbai.

5) The Suit was initially filed only against Defendant Nos.1 to 3 and later, Defendant Nos.4 to 7 were impleaded to the Suit. Defendant No.1 also happened to be partner of the Firm, of which Defendant Nos.4 to 7 were also partners. Since Defendant Nos.4 to 7 also claimed occupancy rights in respect of the suit premises, they were also impleaded in the Suit without acknowledging or recognizing tenancy rights either in favour of the Firm or in favour of Respondent Nos.4 to 7. The Plaintiffs accordingly sought eviction of Defendant No.1-tenant and ouster of rest of the Defendants from the suit premises.

6) Defendant No.1 appeared in the Suit and filed written statement contending *inter alia* that he alone was the monthly tenant in respect of the suit premises. The written statement was subsequently amended by Defendant No.1 contending *inter alia* that though the suit premises were taken in his name and rent receipts were also issued in his name, the premises were taken for the purpose of providing accommodation to the executives and employees of the Firm and other sister concern thereof, of which Defendant No.1 was a partner. It was contended that

Defendant No.1 never occupied the suit premises and the same were allotted to the Defendant No.3, who was technical consultant of the Firm. It was further contended that after Defendant No.3 ceased to be technical consultant of the Firm, he vacated the possession of the suit premises. Defendant No. 1 contended that he was entitled to allow any other executives of the Firm to occupy the suit premises on gratuitous basis.

7) Defendant No.6 filed his written statement contending that the Firm was the tenant in respect of the suit premises. Defendant No.7- Majid Oomerbhoy was impleaded as party Defendant, who passed away during pendency of the Suit. His legal representatives Defendant Nos.7A to 7C were brought on record, who contested the Suit by filing written statement contending that the suit premises were in possession of the Firm and its allied concerns since the tenancy was created for the benefit of the Firm. It was contended that Defendant No.1 had purchased several assets in his own name out of the funds of the Firm, by playing fraud on other partners of the Firm. Defendant Nos.4A and 4B, 5 and 8 did not appear in the Suit, which proceeded ex-parte against them.

8) Based on pleadings, the Trial Court framed 16 issues. Parties led evidence in support of their respective claims. The Plaintiffs examined 6 witnesses. Defendant No.1 examined himself. Defendant No.7B- Nadeem Majid Oomerbhoy (Applicant) examined five witnesses including himself. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the Suit by judgment and order dated 19 August 2015 holding *inter alia* that the Firm was the

real tenant in respect of the suit premises, which were let out to Defendant No.1. The Trial Court accepted the grounds of unlawful subletting, non-use by Defendant No.1 and nuisance /annoyance. The Trial Court accordingly directed the Defendants to handover possession of the suit premises to the Plaintiffs.

9) It appears that the decree was executed, and possession of the suit premises was secured by the Plaintiffs in February-2016. Thereafter only Defendant No.7B- Nadeem Oomerbhoy filed A-1 Appeal No.24 of 2018 before the Appellate Bench of the Small Causes Court challenging the eviction decree dated 19 August 2015. The rest of the Defendants did not challenge the eviction decree. By judgment and order dated 7 February 2024, the Appellate Bench of the Small Causes Court has dismissed the Appeal preferred by the Applicant-Defendant No.7B. Aggrieved by the concurrent decrees passed by the Trial and the Appellate Court, the Applicant has filed the present Revision Application.

10) Ms. Aneesa Cheema, the learned counsel appearing for the Applicant has submitted that the Trial and the Appellate Courts have grossly erred in holding that tenancy was created in the name of Defendant No.1 alone. That Defendant No.1 had acquired tenancy out of funds of the Firm and for the benefit of partners of the said Firm. That this is clear from the fact that Defendant No.1 never himself resided in the suit premises. That the written statement filed by Defendant No.1 cannot be used against Defendant No.7B for the purpose of inferring that tenancy was created in the sole name of Defendant No.1. That in any case, original written statement was

further explained by Defendant No.1 by amending the same in the year 1987 wherein he emphatically pleaded that tenancy was for benefit of the partners of the Firm. That the Plaintiffs did not produce even a single rent receipt to prove creation of tenancy solely in the name of Defendant No.1. That the Plaintiffs did not discharge the burden by leading positive evidence of creation of tenancy in favour of Defendant No.1 alone. That in any case, admissions given by Defendant No.1 cannot bind the other Defendants and in support, she relies on judgment of Delhi High Court in *Amarjit Kaur V/s. Kishan Chand*¹.

11) Ms. Cheema submits that there is voluminous evidence on record produced by the Defendants to prove creation of tenancy and occupation of premises by partners of the Firm. That a stray statement in the written statement by Defendant No.1 cannot nullify voluminous evidence available on record. That other partners also supported Defendant No.7B in support of plea of creation of tenancy in favour of the Firm. That in the year 2008, the Plaintiffs filed one more Suit admitting creation of tenancy in favour of the partners of the Firm. Ms. Cheema therefore submits that allegation of unlawful subletting is erroneously accepted by the Trial and the Appellate Courts. That there is no subletting in the present case as the suit premises are always used by executives and partners of the Firm. She therefore submits that the impugned orders passed by the Trial and the Appellate Courts suffer from serious errors. She therefore prays for setting aside the impugned orders.

1 1979 SCC OnLine Del 217

12) Mr. Vyankatesh Dhond, the learned Senior Advocate appearing for Respondent Nos.1 and 2 submits that the Trial and the Appellate Courts have concurrently held that the tenancy is created in favour of Defendant No.1 after assessing the entire evidence on record. He submits that Defendant No.1 himself took a plea in the written statement about creation of tenancy in his individual name. That subsequent attempt to wriggle out of such admissions by filing amended written statement in 1987 cannot have the effect of nullifying the admissions given in the original written statement. He takes me through the findings recorded by the Trial Court on the issue of creation of tenancy in favour of Defendant No.1. He submits that non-occupation of the premises by Defendant No.1 is an admitted position. Similarly, occupation of premises by persons other than Defendant No.1 is also an admitted position. He therefore submits that the act of unlawful subletting is clearly proved. He further submits that possession of the suit premises is secured in February-2016. That therefore filing of the present Application only by Defendant No.7B is clearly an academic exercise. He prays for dismissal of the Application.

13) Rival contentions urged on behalf of the parties now fall for my consideration.

14) The main controversy, which the Trial and the Appellate Courts were tasked upon to decide, was whether the tenancy was created in favour of Defendant No.1 alone or the same was created in the name of Defendant No.1 in his capacity as partner of the Firm and for the benefit of executives and partners of the Firm. Both the Courts have concurrently held that tenancy was created in the name of Defendant

No.1 in his personal capacity and not for the benefit of the Firm or its partners. The Applicant has challenged the said conclusion reached by the Trial and the Appellate Courts. Before examining correctness of the findings recorded by the Trial and the Appellate Courts on this crucial issue, it must be observed at the very outset that the challenge to the orders passed by the Trial Court before the Appellate Bench of the Small Causes Court was raised only by Defendant No.7B- Nadeem Majid Oomerbhoy. Even before this Court, Defendant No.7B is the only aggrieved party. Defendant No.1 is not an aggrieved party by the finding recorded by the Trial Court that the tenancy was created in his individual name and not for the benefit of other partners of the Firm.

15) The Suit was originally filed against Defendant Nos.1 to 3 alleging that the tenancy was created in favour of Defendant No.1 w.e.f. 1 July 1974. Plaintiffs alleged that Defendant No.1 had sublet the suit premises to Defendant No.2, who was residing in the suit premises with his father-in-law (Defendant No.3). Defendant No.1 appeared in the Suit and filed written statement on behalf of all three Defendants. In his written statement, Defendant No.1 gave specific admission as under:

“2.With reference to paragraph 2 of the Complaint, the defendants admit that the 1st defendant is a monthly tenant of the suit premises and that the suit flat was let to the 1st defendants on 1-7-1974.

16) Thus the three original Defendants gave a specific admission in their written statement that tenancy was created in the individual name of Defendant No. 1. They did not raise a plea that tenancy was created for the benefit of the Firm or its partners.

17) In the year 1987 Defendants amended the written statement and in paragraph 5(a) thereof, they contended as under:-

5(a):- With further reference to Para 5 of the Plaint, the 1st Defendant submits that though the suit premises had been taken in his name and rent receipts were issued in his name, the said premises had been taken for the purposes of providing accommodation to the Executives and Employees of M/s. Bombay Soap Facotry and other sister concerns thereof, of which Defendant No.1 was a Partner.

18) Thus, the Defendants made a slight departure from original stand of creation of tenancy in the name of Defendant No.1 by amending the written statement in the year 1987 by contending that the suit premises were taken for the purpose of providing accommodation to the executives and employees of the Firm and other sister concerns of which Defendant No.1 was a partner. However, even while making such departure, it was specifically admitted that the suit premises were taken in the name of Defendant No.1 and rent receipts were always issued in the name of Defendant No.1. Even in the said amendment effected in the year 1987, Defendants did not claim that the tenancy was for the benefit of the partners. On the other hand, specific admissions were given even in the amended written statement that Defendant No.3 was inducted as 'gratuitous licensee' by Defendant No.1. Defendant No.1 further claimed right to induct other executives of the Firm as gratuitous licensees. Thus, the pleading, even in the amended written statement, about right of Defendant No.1 to induct other persons as 'gratuitous licensees' in fact contains an implicit admission that tenancy was in the name of Defendant No.1, who claimed right to induct third parties as licensees.

19) Thus, amendment effected in the year 1987 did not amount to withdrawal of admission by Defendant No.1 that he was the real tenant in respect of the suit premises. After impleadment of Defendant Nos. 4 to 8 to the suit, written statements were filed by Defendant No.6-Rashid Oomerbhoy and by heirs of Defendant No.7(7A to 7C) contending that tenancy was created for the Firm and for its allied concerns. Defendant Nos.7A to 7C went to the extent of alleging fraud between Plaintiffs and Defendant No.1 by accusing Defendant No.1 of utilisation of funds of the Firm for acquiring properties in his individual name. Thus, the plea of tenancy being created in favour of the Firm was raised by Defendant Nos.6 and 7A to 7C only after their impleadment. Otherwise, Defendant No.1 on his own did not plead, either in original written statement or even in the amended written statement, that the tenancy was created in favour of the Firm.

20) In my view, the initial admissions given by Defendant No.1 about creation of tenancy in his name and for his benefit would continue to haunt not only Defendant No.1, but all other Defendants throughout the pendency of the Suit. Mere subsequent change of stand by Defendant No.1, by amending the written statement, would not have the effect of wriggling out of admission originally made. Though admission given by one Defendant may not always bind the other Defendants, in a Suit seeking eviction of tenant by allegation of unlawful subletting, tenant and sublettee need to be on the same page. It cannot be that the tenant takes position other than actual occupant of the premises. The moment there is conflict in the stands taken by tenant and occupant, subletting automatically gets proved. It cannot be countenanced that Defendant No.1 admits tenancy in his individual

name and for his individual benefits whereas occupants of the suit premises claim that the tenancy was created in favour of the Firm.

21) It must also be borne in mind that the admission is given in the written statement. It is well settled position that admissions given in the pleadings constitute judicial admissions, which stand on a higher footing than evidentiary admissions. The judicial admissions are fully binding on the parties that make them and constitute a waiver of proof. In fact, judicial admissions by themselves can be made the foundation of rights of the parties. Reference in this regard can be made to judgment of the Apex Court in *Nagindas Ramdas V/s. Dalpatram Ichharam @ Brijram and Ors.*². Therefore, no amount of evidence led by Defendant No.1 or by the Applicant (Defendant No.7B) can have the effect of wiping off judicial admission given by Defendant No.1 in the original written statement. In fact, giving of such admission by Defendant No.1 put at rest the very controversy sought to be created by the Applicant about creation of tenancy in favour of the Firm.

22) Reliance by Ms. Cheema on judgment of *Amarjit Kaur* (supra) is inapposite. The judgment deals with a situation where admissions were given in previous proceedings by one of the Defendants, which were held to be not binding on other Defendants in a subsequent Suit. In the present case, Defendant No.1 cannot take a stand contrary to Defendant No.7B while dealing with allegation of unlawful subletting. In my view, therefore, admissions given by Defendant No.1 in the original written statement would continue to haunt even Defendant No.7B (the Applicant).

2 AIR 1974 SC 471

23) Ms. Cheema has contended that the Plaintiffs did not discharge the burden of proving creation of tenancy in the name of Defendant No.1 as no rent receipts issued in the name of Defendant No.1 were produced. However, in the amended written statement Defendant No.1 gave specific admission that rent receipts were issued in his name. This constitutes waiver of proof of creation of tenancy in favour of Defendant No.1. Nothing was therefore required to be produced or proved by the Plaintiffs on account of admission given by Defendant No.1. As a matter of fact, since defence was raised by the Applicant/Defendant No.7B that tenancy was created in favour of the Firm, the burden was on him to prove said assertion, which the Applicant has thoroughly failed to discharge. It therefore cannot be contended that there is any failure on the part of the Plaintiffs to discharge the burden on them. Mere alleged payment of rent by the Applicant/Defendant No.7B would not mean that tenancy got transmitted in his name or in the name of the Firm. Similarly, so called support of other partners to the Applicant (Defendant No.7B) is inconsequential in the light of specific admission given by Defendant No.1 that he was tenant in respect of the suit premises.

24) Upon being queried by this Court as to whether any of the partners of the Firm filed a declaratory Suit claiming tenancy in respect of the suit premises in favour of the Firm, Ms. Cheema fairly admitted that Defendant No.6 filed a declaratory Suit, which came to be dismissed for non-prosecution. The Applicant-Defendant No.7B did not make any efforts to file any declaratory Suit. In fact, since stand of Defendant No.6 and 7B with regard to creation of tenancy in favour of

the Firm is common, dismissal of R.A.D. Suit filed by Defendant No.6 would put to rest the plea of creation of tenancy in favour of the partnership Firm. Filing of subsequent R.A.E. Suit in the year 2008 by the Plaintiff seeking eviction of the Defendants is inconsequential. Once the tenancy was held to be created in favour of Defendant No.1 and since the ground of unlawful subletting and non-use is proved against Defendant No.1, filing of subsequent suit becomes inconsequential.

25) Non-occupation of premises by Defendant No.1 is not disputed. Defendant No.1 himself admitted that he never intended to reside in the suit premises and had a separate residence. Thus, handing over possession of the suit premises to outsiders by Defendant No.1 is specifically admitted. Therefore, unlawful subletting is correctly held to be proved.

26) Considering the overall conspectus of the case, in my view, no interference is warranted in the concurrent findings recorded by the Trial and the Appellate Courts. It is unfortunate that the Suit instituted in the year 1982 remained pending for 32 long years before the Small Causes Court. Plaintiffs have fought a long battle over 44 years for ensuring eviction of the Defendants. After the Suit was decreed, it appears that possession of the suit premises is already recovered by the Plaintiffs. Reversing the decree would mean restoration of possession lost in the year 2016. No case is made out by the Applicant/Defendant No.7B, who now remains to be a lone opposer to eviction decree, for restoration of possession of the suit premises by reversing the concurrent findings recorded by the Trial and the Appellate Courts.

27) Civil Revision Application is devoid of merits and it is accordingly **dismissed** with no orders as to costs.

[SANDEEP V. MARNE, J.]