



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.429 OF 2024

M/s. Ish Homes Privates Limited

...Applicant

V/s.

Mrs. Sundari Honnaya Poojary and Ors.

...Respondents

Mr. Javed Akhtar Khan *for the Applicant.*

Mr. G.H. Keluskar *for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

DATED: 20 APRIL 2026.

P.C.:

1) Revision Application challenges judgment and decree dated 3 May 2024 passed by the Appellate Bench of the Small Causes Court allowing the Appeal filed by the Defendants and setting aside the decree dated 30 October 2024 passed in R.A.E. & Suit No.1096 of 2009. The Trial Court has dismissed the Suit by decree dated 30 October 2021 on solitary ground of unlawful subletting. The Appellate Court, while allowing the Appeal, has dismissed the Suit by holding that there is no subletting since Defendant Nos.1 and 2 are real brothers.

2) I have heard Mr. Khan, the learned counsel appearing for the Applicant and Mr. Keluskar, the learned counsel appearing for the Respondents and have considered the submissions canvassed by them. I

have gone through the findings recorded by the Trial and the Appellate Courts and have also perused the records of the case.

3) The premises were let out to Defendant No.1-Mr. K.H. Pujari by the Plaintiff. Defendant No.2- Mr. Naganna K. Poojari is the real brother of Defendant No.1. The Plaintiff however, filed eviction Suit bearing R.A.E. & R. Suit No.1096 of 2009 by pleading that Defendant No.2, who was occupying the suit premises is not member of family of Defendant No.1. Pleadings in paragraph 5 of the Plaint are as under:-

5. The Plaintiff states that Defendant No.1 has illegally and unlawfully sublet the suit premises to Defendant No.2, who was not the member of the family of the Defendant No.1. The Plaintiff states that the Defendant No.1 has permanently shifted to other address by inducting the Defendant No.2 in the suit premises. The Plaintiff states that for inducting the Defendant No.2 in the suit premises the Defendant No.1 has been recovering from him the rent, compensation, premium or such like some or consideration.

4) However, Defendant Nos.1 and 2 filed written statement opposing the Suit contending that Defendant No.2 is the real brother of Defendant No.1. The very foundation in the Plaint that Defendant No.2 is not family member of Defendant No.1-tenant is proved to be false. Now there is no dispute to the position that Defendant Nos.1 and 2 are real brothers. The case thus involves second Defendant's presence in the suit premises even though the rent receipt is in the name of Defendant No.1. It is not Plaintiff's pleaded case that Defendant No.1 was earlier occupying the suit premises, he left the suit premises and then inducted his brother-Defendant No.2 with a view to ensure that Defendant No.1 does not have to surrender the premises to the landlords. The case apparently involves a situation where Defendant No.2 always resided in

the suit premises as a part of one singular family. Therefore, merely because Defendant No.1 has secured alternate premises, or has shifted to some other premises, the same would not convert Defendant No.2 into unlawful sub-tenant. The issue in this regard is squarely covered by judgment of this Court in **Vasant Mahadev Pandit and Another V/s. Zaibunnisa Abdul Sattar and Others¹**, in which it is held in paragraphs 9 and 12 as under:-

9. The question that arises for consideration is whether the possession of defendant Nos. 2 and 3 of the suit premises amount to unlawful subletting of the suit premises by defendant No. 1. As mentioned above it is not in dispute that defendant No. 2 as well as defendant No. 3 are closely related to defendant No. 1. Original Defendant No. 2, since deceased, was the real brother of defendant No. 1; whereas original defendant No. 3, since deceased, was the father-in-law of the real brother of defendant No. 1. The case made out on behalf of the defendants before the Court below was that both the defendant Nos. 2 and 3 were occupying the suit premises only as family members of defendant No. 1. It was contended on behalf of the defendants that since defendant Nos. 2 and 3 were not strangers, the onus of establishing that the premises were unlawfully sub-let to defendant Nos. 2 and 3 and that the defendant No. 1 was profiteering out of the said transaction by charging sum of Rs. 50/- per month from them was very heavy on the plaintiff. No doubt the Appellate Court has recorded a finding that the plaintiff has established the case of unlawful sub-letting in favour of defendant Nos. 2 and 3. however, it is contended that, the said conclusion has been reached on the basis of surmises and conjectures. On the other hand the learned counsel for the respondent No. 1 plaintiff essentially adopted the conclusions reached by the Appellate Court.

xxx

12. It is not unknown in our society that brothers and the wives of the deceased brother would come and stay in case of distress. It is also not unknown that relatives in distress would take shelter with their relations. The evidence adduced on behalf of defendants would clearly go to show that defendant No. 2 was none else but the real brother of defendant No. 1. Assuming that the suit premises were let out to defendant No. 1 the fact remains that defendant No. 2 was using the suit premises only in the capacity of a family member of defendant No.

1 2001(3) Mh.L.J.118

1. After Laxman expired, his wife Sunanda impleaded defendant No. 2 continued to occupy the suit premises along with her mother-in-law Yashodabai i.e. mother of defendant No. 1. The evidence which has also come on record and not seriously challenged by the plaintiff is that the defendant No. 3 was the father-in-law of the real brother of defendant No. 1. In that sense he was also related to the defendant No. 1. Although, defendant No. 3 was not a blood relation, but generally he was closely related to the brother of defendant No. 1 and therefore can be said to be a family member. Obviously because of the close relation the defendant No. 3 was accommodated in the suit premises while in distress. The evidence adduced on behalf of defendants go to show that defendant No. 3 was compelled to shift in the suit premises due to threat of demolition of his accommodation which he was occupying at Thane. In other words, the evidence would unfailingly indicate that defendant Nos. 2 and 3 were occupying the suit premises only as the family members of defendant No. 1 and in no other capacity. If the premises are occupied by the family member, even if such member has joined the original tenant subsequently that by itself will not amount to creation of any sub-tenancy in his favour. Such interpretation cannot be countenanced at all, for even the Legislature in its wisdom has thought it appropriate to exclude family members from being licensee. If reference is made to the definition of licensee, it would be seen that a member of the family residing together with the tenant is expressly excluded from the definition of licensee. If the principle underlying this legislative intent is applied to the fact situation I have no hesitation to hold that even if a family member starts staying with the original tenant at a later stage that by itself will not attract the mischief of unlawful sub-letting. Observations made by this Court in judgment in the case of Babanrao Shankarrao Chavan vs. Chandrashekhar Ramchandra Shinde, 1984 (2) Bom.C.R. 671 would be useful, which reads thus :

"9. It is not unknown in our country that when a widowed sister comes to reside with her brother and when she starts residing with him she resides not as a servant or a stranger, but resides as part and parcel of the family. This is the rule. There may be exceptions. But if there are exceptions, the exceptions have got to be proved by special evidence. In the absence of any such evidence to the contrary, it must be assumed that a widowed sister who comes to stay with her brother along with her, young one would be staying with him not as a stranger but as brother's family." Likewise her younger son would be part of that very family."

(Emphasis added)

5) Thus, in ***Vasant Mahadev Pandit*** (supra) Defendant Nos.2 and 3 were closely related Defendant No.1-tenant as Defendant No.2 was real

brother and Defendant No. 3 was father-in-law of real brother of Defendant No.1. Plaintiffs came out with a case that Defendant Nos.2 and 3 were occupying the suit premises whereas Defendant No.1 had left the same. Denying the ground of unlawful subletting, this Court held that Defendant Nos.2 and 3 occupied the suit premises as members of the family. In ***Vasant Mahadev Pandit*** this Court refused to believe the ground of unlawful subletting only on account of the fact that Defendant No.1 was not found occupying the suit premises. Present case is much better than the one involved in ***Vasant Mahadev Pandit***.

6) In the present case, Defendant Nos.1 and 2 have jointly resided in the suit premises as members of one family. Merely because Defendant No.1 has shifted to another premises permitting his brother to occupy the suit premises, act of unlawful subletting does not get proved. In my view, therefore, the Appellate Court has rightly allowed the Appeal by reversing the decree of the Trial Court.

7) It is contended on behalf of the Revision Application that the Appellate Court has allowed the Appeal by taking into consideration the factum of presence of name of Defendant No.2 in the Conveyance Deed. My attention is invited to the findings in paragraph 41 of the Appellate Court's judgment. It is sought to be contended that the list of persons appended to the Conveyance Deed included not just tenants, but also occupants. My attention is also invited to various orders passed by this Court, in which this Court has refused to believe that the persons enumerated in the list appended to the Conveyance Deed are all tenants. In my view, however, it is not necessary to rely upon the list appended to

the Conveyance Deed for the purpose of upholding the right of Defendant No.2 as a tenant. Defendant No.2 has not filed any claim for claiming tenancy in his individual name. The Appeal was preferred jointly by Defendant Nos.1 and 2. Therefore, the tenancy would continue in favour of Defendant No.1. However, the mere residence of Defendant No.2 in his capacity as real brother of Defendant No.1 would not give rise to a presumption of unlawful subletting.

8) The Plaintiff is a developer, who has apparently purchased the building in which the suit premises are situated. As a result of setting aside the Trial Court's decree, the family would receive a flat in the redeveloped building. In that view of the matter, there is no warrant for interference in the impugned judgment passed by the Appellate Court. Civil Revision Application is devoid of merits and it is accordingly **rejected.**

[SANDEEP V. MARNE, J.]