

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15677 OF 2025

Riyaz Sajjan and Anr.

.....PETITIONERS

: VERSUS :

Jehangir Dinshaw Irani and Ors.

....RESPONDENTS

Mr. Sagar Bhirange *for the Petitioner.*

Mr. Ranjit A. Thorat, Senior Advocate and Ms. Pratibha Shelke *for Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATED : 27 MARCH 2026.

P.C. :

1) The petition is filed by the Petitioners under Article 227 of the Constitution of India assailing the judgment and order dated 16 September 2025 passed by the District Court dismissing Regular Civil Appeal No. 227/2024 and upholding the order dated 21 October 2024 passed by the learned Judge, Small Causes Court, Pune by which the Objection Petition filed by the Petitioners for obstructing execution of

decree has been dismissed by imposition of costs of Rs.5,00,000/-. The Petitioners have challenged separate order dated 16 September 2025 passed by the District Court rejecting an application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (**the Code**) for leading additional evidence.

2) An open plot of land admeasuring 19500 sq.ft. situated at Survey No.82/A/1, Hissa No.2, CTS No. 797-A & 797, Bhawani Peth, New CTS No. 1012, Nana Peth, Pune is the suit property. Respondent no.1/plaintiff claimed ownership in the '**suit property**'. Father of the Plaintiff, Dinshaw Kaikhushroo Irani let out the suit property to the father of the deceased defendant, Bhaurao Khushaba Kakade, who constructed a Cinema Theatre on the **leased land**. After the death of Bhaurao Khushaba Kakade, the leasehold rights were inherited by the deceased-Balkrishna Baburao Kakade. The tenure of the lease was for 40 years, which was renewable. According to the Plaintiffs, no notice for renewal of the lease was received and therefore tenure of the lease expired on completion of 40 years. Since the open plot of land was covered by the Bombay Rent (Hotels and Lodging), the deceased-Defendant became a protected tenant in respect of the leased land.

3) Plaintiffs instituted Civil Suit No.72/2010 in the Court of Small Causes Court at Pune for recovery of possession of the suit property from the deceased-Defendant on the grounds of default in payment of rent and non-use. Defendant appeared in the suit and filed written statement. Defendant expired during pendency of the suit and accordingly, his legal heirs were brought on record. Based on pleadings,

the Trial Court framed issues. Plaintiff led evidence by examining himself. Defendants failed to lead evidence. The Trial Court proceeded to decree the suit by judgment and order dated 11 June 2014 directing Defendants to handover possession of the suit property to the Plaintiff with further directions for payment of arrears of rent. The Trial Court also directed conduct of enquiry into mesne profits.

4) The decree dated 11 June 2014 was put in execution by the Plaintiff by filing Darkhast No. 141/2015. Execution of the decree was however obstructed by the Petitioners, who filed application under Order 21 Rule 97 and 99 of the Code contending *inter alia* that late Dara Irani had inducted them onto the suit premises in the year 1997 with the consent of the original lessee. They contended that they are tenants in respect of the suit premises and have been started paying rent to late Dara Irani. They claimed that business of Shalimar Caterers is being run in the suit premises. It was further contended that late Dara Irani had offered to sell the suit property to the Petitioner's father but he unfortunately expired on 21 October 2004. Petitioners questioned ownership of the Plaintiff in respect of the suit property.

5) Parties led evidence. Petitioner No.1 examined himself and relied on several documentary evidence. No oral evidence was led on behalf of the Plaintiff who filed several documents. After considering the pleadings and documentary evidence, the Small Causes Court proceeded to dismiss the Objection Petition at Exh.43 with exemplary costs of Rs.5,00,000/-.

6) Petitioners filed Regular Civil Appeal No. 227/2014 challenging Trial Court's order dated 21 October 2024. In their Appeal, Petitioners filed application for leading additional evidence under Order 41 Rule 27 of the Code. During pendency of the Appeal, the Appellate Court fixed interim compensation of Rs.2,00,000/- per month in respect of the suit property. The learned District Court heard the Appeal alongwith the application for leading additional evidence together and has passed two separate orders. The learned District Judge dismissed the application for leading additional evidence by order dated 16 September 2025. By seperate judgment and order, the Appeal has been dismissed. The entire amount of interim compensation deposited in the Court is directed to be released in favour of the Plaintiff.

7) Aggrieved by the judgment and order dated 16 September 2025 passed by the District Court confirming the order of the Trial Court dated 21 October 2024 as well as by rejection of application for leading additional evidence, the Petitioners have filed the present petition.

8) Mr. Bhairange, the learned counsel appearing for the Petitioners submits that the Trial and the Appellate Courts have failed to appreciate the factum of creation of tenancy by late Dara Irani in favour of the Petitioners. He submits that the witness of one of the co-owners of the property has admitted creation of tenancy in favour of the Petitioners vide Affidavit dated 31 December 2018. He submits that the law does not require production of written proof of creation of tenancy. That tenancy can also be inferred on the basis of exclusive possession of the premises

by tenant. That in the present case, there is ample evidence to infer creation of tenancy in favour of the Petitioners.

9) Mr. Bhairange further submits that Appellate Court has erred in rejecting application for production of additional evidence. That additional evidence clearly proves exclusive possession, as well as creation of tenancy in respect of the suit property. That Petitioners are erroneously precluded from leading evidence in respect of the additional documents which could not be produced before the Trial Court. He relies on judgment of the Supreme Court in K. Venkataramiah vs. A. Seetharama Reddy¹ in support of his contention that it is the duty of the Appellate Court to admit additional evidence the moment substantial cause is shown. Mr. Bhairange accordingly prays for setting aside the impugned orders passed by the Trial and the Appellate Courts.

10) The Petition is opposed by Mr. Thorat, the learned Senior Advocate appearing for Respondent No.1-Plaintiff. He submits that Petitioners are rank trespassers in the suit properties, who have no semblance of right to occupy the same. That eviction decree has been passed against the heirs of the original tenants who are no longer interested in holding on to possession of the suit property. That original tenants have not inducted the Petitioners in the suit property. That Petitioners have thus failed to establish any independent right to occupy the suit property. He submits that there is no warrant for interference in the concurrent findings recorded by both the Courts. He submits that no case was made out for production of any additional evidence by the

¹ AIR 1963 SC 1526

Petitioners and the application has been rightly dismissed by the Appellate Court. He submits that Petitioners have wrongfully prevented Plaintiffs from enjoying possession of the suit property in pursuance of decree passed 12 years ago. He prays for dismissal of the Petition.

11) Plaintiff's suit for eviction of the original tenants, Bhaurao Kakade, as well as his legal heirs, Balkrishna Bhaurao Kakade came to be decreed by the Small Causes Court on 11 June 2014 on the ground of default in payment of rent and for non-use of the suit property for 6 months preceeding the date of filing of the suit. The suit was instituted on 16 February 2010 by Plaintiff-Jahangir contending that his father had let out the suit property to Bhaurao for a tenure of 40 years with permission to construct a Cinema Hall vide lease deed dated 16 October 1936. Though the lease contemplated renewal on expiry on tenure of 40 years, no notice was received from Bhaurao or his son for renewal of the lease. Mr.Jahangir claimed that rent in respect of the suit property was not paid from 1 March 1994. It was further claimed that Defendants in the suit were not using the suit premises and were inducting various sub-tenants and their persons therein from time to time. Though Defendants resisted the suit by filing written statement, they lost interest in defending the same and did not lead evidence in support of their defence. The suit came to be decreed by judgment and order dated 11 June 2014 directing the Defendants to handover possession of the suit premises to the Plaintiffs with further direction for payment of arrears of rent of Rs.32,895/-, as well as an order for conduct of enquiry into mesne profits under Order 20 Rule 12(1)(c) of the Code.

12) Defendants did not challenge the eviction decree dated 11 June 2014. Plaintiffs accordingly filed Darkhast No. 141/2015 for execution of the decree. However, Petitioners presented obstruction and filed application under Order 21 Rules 97 and 99 of the Code on 17 December 2018.

13) Before the Trial Court, the case of the Petitioners was that Plaintiff-Jahangir is not the owner of the suit property. They further contended that the owner was late Dara Kaikushroo Khushroo Irani, who had inducted Petitioners as tenants in the suit property. They also contended that Bhaurao or Balkrishna did not have any concern with the suit property and had handed over possession to late Dara who created tenancy in favour of the Petitioners with consent of Bhaurao Kakade. It was therefore contended that the decree was obtained by practising fraud by filing suit against persons unconnected with the suit property. Thus, the broad case of the Petitioners for obstructing execution of decree was their alleged independent right to occupy the property in capacity as tenants in pursuance of tenancy created by late Dara Irani.

14) Before the Trial Court, Petitioners thoroughly failed to prove existence of alleged tenancy created by late Dara Irani. Petitioners did not indicate the exact date, month or year in which the tenancy was allegedly created. Similarly, there was no pleading in the objection petition about the quantum of rent agreed to be paid. Later in evidence, the lacuna was sought to be filled up by questioning figure of Rs.3,000/- per month. However, no rent receipt was produced before the Trial Court.

15) The Trial Court thereafter considered the case of the Petitioners that they were doing catering business in the suit premises since the year 1997. However, Petitioners relied on Shop Act license issued on 16 July 2019 and Food License issued on 12 August 2019. Both the documents were thus secured after filing of the Objection Petition. Thus, the Petitioners failed to prove either the factum of creation of tenancy or their occupation of the suit property since 1997. They also did not produce documentary evidence of having purchased or having supplied in catering items at any point of time after 1997. Reliance was placed on Affidavit of one Jatin Vasant Shah claiming to be the co-owners of the suit property in which admission of tenancy of Petitioners was given. The said person was not examined as a witness. Similar was the case in respect of the affidavits of Umar Khan and Niraj Tilak who were also not examined as witnesses. After scrutiny of the entire evidence on record, the Trial Court has recorded a finding of fact that Petitioners failed to prove creation of tenancy by late Dara in their favour in 1997. The Small Causes Court accordingly dismissed the objection petition of the petitioners by imposing exemplary costs of Rs.5,00,000/-.

16) Before the Appellate Court, Petitioners filed application under Order 41 Rule 27 of the Code for leading additional evidence. Mr. Bhirange has strenuously contended that the Appellate Court has erred in not granting an opportunity to the Petitioners to lead additional evidence. However, upon being queried as to which documents were sought to be produced alongwith additional evidence, Mr. Bhirange fairly admits that such documents are not filed alongwith the Petition. If the documents were of such vital importance, Petitioners ought to have

produced the same for perusal of this Court. In absence of such documents on record, it is not possible to examine whether the same have any relevance to the issue at hand and whether Plaintiff could have produced the same before the Trial Court. However, order passed by the Appellate Court on 16 September 2025 would indicate that no averments are raised in the objection petition relating to the said documents. In para-5 of the order, the Appellate Court has held as under:

5) Perused the application as well as the documents annexed thereto. In the documents, the address is mentioned as “near” Nishant Theatre. Therefore, it does not appear to be in respect of the suit property. More so, I have seen Exhibit 58 before the Ld. executing court. The respondent herein, had specifically called upon the applicant to produce rent receipts, shop, establishment, license, and other documents. In reply to this application, the applicant had specifically submitted that the rent receipts and shop establishment are not in existence. Therefore, the production of such documents at such a belated stage makes the same very doubtful.

17) Thus, the Petitioners were specifically called upon to produce rent receipts, Shop Act license etc. During the course of evidence and a clear admission was given that the same was not in existence. Furthermore, there are no supporting pleadings in the application relating to the said documents. However, the same were directly sought to be produced before the Appellate Court raising serious doubts about their authenticity. Furthermore, the Appellate Court has rightly taken into consideration written statement filed by the original Defendant in which they categorically denied having handed over possession of the suit premises to the Petitioners. In my view therefore, application for production of additional evidence has rightly been rejected by the Trial Court after being satisfied that the same was not required for pronouncing the judgment. Reliance by Mr. Bhirange on judgment of the

Apex Court in ***K. Venkataramiah*** does not cut any ice in view of the fact that the Appellate Court has recorded an emphatic finding that consideration of additional evidence is not necessary for pronouncing the judgment in the Appeal.

18) So far as the order passed by the Appellate Court is concerned, the Appeal was otherwise without any merits as the Petitioners had failed to indicate existence of any independent right to occupy the suit property. They did not produce any evidence for the purpose of inferring that they were inducted by late Dara as tenant in respect of the suit property. It is not that the Petitioners are inducted by the tenants-Bhaurao or Balkrishna Kakade. Reliance is placed by Mr. Bhurange on judgment of the Apex Court in ***Delta International Ltd. vs. Shyam Sundar Ganeriwalla and Anr.***² In the that case, an agreement for leave & license was created on 18 July 1970 and issue before the Court was whether the said agreement was for lease or license. The observations relied upon by Mr. Bhurange on para-15 of the judgment are with regard to gathering of intention of the parties from the document for arriving at the true nature thereof. That the judgment does not lay down an abstract proposition that the moment exclusive possession of the property is granted, tenancy is automatically created. In the present case, there is nothing on record to indicate that owner of the property inducted Petitioners or put them in exclusive possession. Petitioners have failed to prove the manner in which they were inducted into the suit premises. Therefore, the judgment in ***Delta International*** has absolutely no relevance for deciding the present case.

² AIR 1999 SC 2607

19) The Trial and the Appellate courts have concurrently held that Petitioners have failed to prove existence of independent right to occupy the suit premises. In that view of matter, Petitioners cannot obstruct execution of the eviction decree. The Trial Court has rightly rejected the Objection Petition and the order of the Trial Court has rightly been upheld by the District Court. No interference is warranted in the impugned orders.

20) The Writ Petition is accordingly dismissed. However, considering the facts and circumstances of the case, there shall be no order as to costs.

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[SANDEEP V. MARNE, J.]