

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.593 OF 2025

Tohernissa Mohd. Naseem Ansari	Applicant
V/S	
Nandkumar Laxman Sade & Ors.	Respondents

Mr. H.P. Pandey with Mr. Aziz Khan *for the Applicant.*

Mr. Nandkumar L. Sade-*Respondent No.1-in-person present in Court.*

CORAM : SANDEEP V. MARNE, J.

DATE : 16 APRIL 2026.

P.C.:

1. The Revision Application challenges the judgment and order dated 16 October 2025 passed by Appellate Bench of Small Causes Court dismissing Miscellaneous Appeal No.50 of 2024 and confirming Trial Court's order dated 24 June 2024. By order dated 24 June 2024, the Trial Court has rejected MARJI Application No.47 of 2022 filed by the Applicant/Defendant No.1 under Order IX, Rule 13 of the Code of Civil Procedure, 1908 (**the Code**) for setting aside *ex-parte* decree dated 7 March 2020 passed in RAE & R Suit No.436 of 2017.

2. I have heard Mr. Pandey, the learned counsel appearing for the Applicant and Respondent No.1 appearing-in-person. I have considered the submissions canvassed by them. I have gone through the reasons recorded by the Trial and the Appellate Courts in the impugned orders.

I have also perused records of the case filed alongwith the Revision Application.

3. The suit was instituted by the Plaintiffs seeking the eviction of the Applicant/Defendant No.1 by describing her to be the tenant and also against Defendant Nos.2 and 3 by describing them as unlawful occupants. The eviction was sought on grounds of default in payment of rent, unlawful additions and alterations, sub-letting and non-use. The suit summons were served on Defendant Nos.2 and 3 (occupants) on 21 November 2017 by pasting the same at the suit premises. It appears that Defendant No.2 appeared before the Court on 30 November 2017 after being duly served with suit summons. So far as Applicant/Defendant No.1 is concerned, she is served through paper publication on 27 November 2017 since she was not found in the suit premises. The Trial Court proceeded to decree the suit *ex-parte* vide judgment and order dated 7 March 2020 on the grounds of default in payment of rent and non-use. The grounds of unauthorized additions and alterations and sub-letting were however rejected. After two long years, Applicant/Defendant No.1 filed MARJI Application No.47 of 2022 for setting aside *ex-parte* decree under Order IX, Rule 13 of the Code. The Application has been rejected by the Trial Court vide order dated 24 June 2024, which is confirmed in Appeal by the Appellate Bench of Small Causes Court.

4. It is contended by Mr. Pandey that the Applicant/Defendant No.1 is an old lady suffering from several medical ailments such as diabetes, blood pressure etc. That on account of her health conditions, she was

residing mainly with her son at Vapi and had appointed Defendant No.2 as caretaker in respect of the suit premises. Thus, there is emphatic admission on the part of Applicant/Defendant No.1 that she has been residing mainly at Vapi alongwith the son. It appears that Defendant No.2, the alleged Care Taker appointed by the Applicant, was duly served with suit summons and also appeared before the Trial Court on 30 November 2017. If she indeed was the caretaker of Applicant, she must have informed the Applicant about filing of the suit. The Applicant however remained negligent and did not appear before the Trial Court to defend the suit. This was possibly on account of the fact that Defendant No.2 was occupying the suit premises and Applicant/ Defendant No.1 did not have much interest left in defending the suit.

5. Ordinarily, the courts are liberal in permitting parties to prosecute/defend litigation on merits rather than deciding the proceedings in default. However, in the present case, it has come in evidence that the ration card issued in the name of husband of Defendant No.1 was cancelled. Similarly, the voters list for the year 2014 did not bear name of any person in respect of the suit premises. Even Mr. Pandey was repeatedly heard urging that the Applicant/Defendant No.1 is mainly the resident of Vapi. Thus, no useful purpose would be served in granting an opportunity to the Applicant/Defendant No.1 to defend the suit for setting aside the *ex-parte* decree. Filing of MARJI Application is aimed solely at delaying recovery of possession of suit premises, which are apparently in occupation of Defendant No.2 who is not the tenant.

6. Reliance by Mr. Pandey on judgments of the Hon'ble Supreme Court in *G.P. Srivastava vs. R. K. Raizada and Ors.*¹ and *Robin Thapa vs. Rohit Dora*² does not assist the case of the Applicant. The case involves peculiar circumstances where this Court is convinced that the Applicant/Defendant No.1 is not the resident of the suit premises and has virtually shifted herself at Vapi. The remedy of setting aside *ex-parte* decree cannot be permitted to be availed for the purpose of ensuring that an unlawful occupant continues to remain in possession by dragging the proceedings of the suit. The Applicant/Defendant No.1 has also failed to make out a sufficient cause for setting aside the *ex-parte* decree.

7. Considering the above circumstances, this Court is not inclined to exercise revisionary jurisdiction under Section 115 of the Code in absence of any jurisdictional error being committed by the Trial and the Appellate Courts. The Civil Revision Application being devoid of merits is accordingly **rejected**.

(SANDEEP V. MARNE, J.)

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by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
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1 AIR 2019 SC 3225

2 (2000) 3 SCC 54