

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

**CIVIL REVISION APPLICATION NO. 904 OF 2013**

1. Arvind Engineering Company,  
A Partnership Firm.  
At Godown No.16, New Sun Mills Compound,  
Sun Mills Road, Lower Parel, Mumbai -400 013
2. Shree Ganesh Industries  
Having their business at Unit No 6,  
Mezzanine floor, Arvind Commercial Building,  
Sun Mill Compound, Lower Parel,  
Mumbai 400 013
3. Arvind Mechanical and Electrical Engineers  
Having their business at Ground floor and  
Unit No 1 and 2, Mezzanine floor,  
Arvind Commercial Building,  
Sun Mill Compound, Lower Parel,  
Mumbai 400 013

... Applicants  
(Orig. Defendants 1,5 & 6)

**Versus**

1. Damji Gelabhai Shah (deceased)  
through legal heirs
- A) Nautamdamji Shah  
Age 62, R/o Shree Ganesh Krupa,  
83 Shivaji Park, Mumbai – 400038
- B) Sanjay Damji Shah  
Age 52 R/o 105 Mysore Colony  
Chembur Mumbai 400074
2. Nautam Damji Shah  
Occ: Bussiness,  
Having his office at Mahavir Industries,  
New Sun Mills Compound, Lower Parel,

Mumbai 400 013

3. Jayesh Damji Shah  
Occ: Bussiness,  
Having his office at Mahavir Industries,  
New Sun Mills Compound, Lower Parel,  
Mumbai 400 013
4. Vishwanath Sakharam Churi  
Occ: Bussiness,  
Having his office at Mahavir Industries,  
New Sun Mills Compound, Lower Parel,  
Mumbai 400 013
5. Mahendranath Sakharam Churi  
(Deleted since deceased)  
Through legal heirs and legal  
Representatives
- 5A. Aruna Mahendranath Churi,  
W/o. Mahendranath Churi,  
(deleted since deceased)
- 5B. Mugdha Nilesh Raut,  
D/o. Mahendranath Churi,  
Age 41, R/o-C-15/14, Satya Darshan  
Malpha Dongari 3, Andheri (E),  
Mumbai - 400 093.
- 5C. Priya Krishna  
Age 37, R/o. Flat No. 13, MN6 4<sup>th</sup> floor,  
Kashish Park Complex, LBS Marg,  
Near Tip Top Plaza, Thane 400 604.
- 5D. Sagar Mahendranath Churi  
Age 35, R/o-14/B, 3<sup>rd</sup> floor,  
Ram Mandir Trust Building,  
Ram Mohadikar Marg,  
Behind Victoria Church, Mahim,  
Mumbai 400016.

6. Vijay Sakharam Churi  
Occ: Bussiness,  
Having his office at Mahavir Industries,  
New Sun Mills Compound,  
Lower Parel, Mumbai 400 013
  7. M/s Sagart  
Having their business at Mezzanine floor,  
Unit no 5, Godown No 16, Sun Mill Compound,  
Sun Mill Road, Lower Parel, Mumbai 400013
  8. M/s Trend Pack  
Having their business at Mezzanine floor,  
Unit no 6, Godown No 16, Sun Mill Compound,  
Sun Mill Road, Lower Parel, Mumbai 400 013
  9. M/s Jyoti Plastics  
Having their business at Mezzanine floor,  
Unit no 3, Godown No 16, Sun Mill Compound  
Sun Mill Road, Lower Parel, Mumbai 400 013
- ...Respondents  
(Orig. Plaintiff No.  
1-6 and Defendants Nos. 2 to 4

**WITH  
INTERIM APPLICATION NO. 9010 OF 2025  
IN  
CIVIL REVISION APPLICATION NO. 904 OF 2013**

|                                                             |                |
|-------------------------------------------------------------|----------------|
| Nautam Damji Shah                                           | ...Applicant   |
| <b>IN THE MATTER BETWEEN</b>                                |                |
| Arvind Engineering Company & Ors                            | ...Applicants  |
| Versus                                                      |                |
| Damji Gelabhai Shah (deceased) through<br>legal heirs & Ors | ...Respondents |

**WITH  
INTERIM APPLICATION NO. 3167 OF 2025  
IN  
CIVIL REVISION APPLICATION NO. 904 OF 2013**

|                           |              |
|---------------------------|--------------|
| Vishwanath Sakharam Churi | ...Applicant |
|---------------------------|--------------|

**IN THE MATTER BETWEEN**

Arvind Engineering Company & Ors

...Applicants

Versus

Damji Gelabhai Shah (deceased) through  
legal heirs & Ors

...Respondents

\*\*\*\*

Mr. Prasad Dhakephalkar, Senior Advocate a/w Mr. Mandar Soman i/b Smt. G. R. Raghuwanshi for the Applicants.

Mr. R. A. Shaikh a/w Mr. Hasan Sayed, Ms. Swati Margi, Ms. Maria Khatkhatye, Adv. Subhi Sayed and Adv. A. R. Khan for Respondent Nos. 2, 3 and 6 and for Applicant in IA/9010/2025

Mr. Prashant G. Karande a/w. Mr. Sudam Patil i/b Mr. Praful Pawar for Respondent Nos. 4, 5B, 5C and 5D.

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**CORAM : M. M. SATHAYE, J.**

**RESERVED ON : 14<sup>th</sup> OCTOBER, 2025**

**PRONOUNCED ON : 23<sup>rd</sup> JANUARY, 2026**

**JUDGMENT:**

1. The Civil Revision Application filed u/s. 115 of the Civil Procedure Code, 1908 ('CPC' for short) is filed challenging the impugned judgment and decree dated 21/11/2013 passed by the Appellate Bench of the Small Causes Court, Mumbai in Appeal No. 316 of 2007. By the said impugned judgment and decree, the Appeal filed by the present Revision Applicants/Defendant Nos. 1, 5, and 6 is dismissed, thereby confirming the judgment and decree dated 03/04/2007 passed by the Small Causes Court, Mumbai in R.A.E. Suit No. 517/783 of 2003, filed by the present Respondent Nos. 1 to 6 (Original Plaintiffs).

2. The dispute is arising out of the Maharashtra Rent Control Act, 1999 ('MRC Act' for short).

3. A shed known as Godown No. 16 having ground plus one storey, together with land admeasuring 634.27 sq.yards equivalent to 530.33 sq.mtrs being part of the survey No. 1/2754, 2/2748, 1/2/755, 2/2755, 3/2755, 1/2752, 2/2752, 1/2749 and 3/2752 bearing Cadestral Survey Nos. 160, Lower Parel Division, Mumbai - 400013 is the subject matter of dispute (hereinafter referred to as 'suit premises' for short). Suit premises consists of both - 'the suit Godown No. 16' and 'the suit land' beneath.

4. The present Revision Application was admitted on 13/02/2014 by reasoned order, by recording that Respondent No. 8 has surrendered possession of Unit No. 4 in the suit godown to Applicants and Respondent Nos. 7 and 9 have surrendered possession of Unit Nos. 3 and 5 to Respondent Nos. 1 to 6 and both sides made statements that they will not create third-party interest nor part with possession of suit premises or Godown No. 16 or any units therein.

5. By order dated 21/08/2017, this Court determined the interim compensation in view of eviction decree being stayed, subject to the Applicants depositing in this Court the compensation @ of Rs.4.50 lakhs per month with effect from 01/12/2013.

6. The Hon'ble Supreme Court, by order dated 06/11/2017, modified the above order, thereby directing the Applicants to deposit interim rent @ Rs.4,50,000/- only for the months of October, November and December, 2017 with December amount to be paid before 15/01/2018 and arrears and interest (as directed by this Court) has been stayed till disposal of the Civil Revision Application. Hearing of present revision application was expedited to be decided within 3 months.

7. Few other relevant and necessary facts can be summarized as under.

7.1. M/s. New Sun Mills Company Limited was the original owner, which let out the suit premises to the Applicant No. 1 on 25/10/1956 for carrying out business of mechanical engineering and a workshop.

7.2. In the year 1981, Applicant No. 1 showed willingness to purchase the suit godown for a consideration of Rs.20,000/- and take the land beneath on lease for 90 years. Accordingly, the agreement for lease was signed on 01/08/1981.

7.3. According to the Applicants, the relationship between the parties changed/altered here and the Applicants became the prospective owners of suit Godown No. 16 and lessee in respect of the suit land beneath.

7.4. In February 1983, the erstwhile owner - New Sun Mills Company went into voluntary liquidation. Initially, a liquidator was appointed who subsequently resigned and one Mr. Narendrakumar Popatlal Patwa was appointed as liquidator on 16/04/1994 ('Mr. Patwa' for short)

7.5. The official liquidator Mr. Patwa executed a conveyance deed dated 12/12/2002 in favour of Respondent Nos. 1 to 6/Plaintiffs. This document is contentious, in as much as, according to Applicants, only suit-land underneath is conveyed. According to Respondents Nos. 1 to 6, by the said conveyance deed, they have become landlord of entire suit premises including the suit-godown and suit land beneath. This is the crux of dispute, having direct bearing on landlord-tenant relationship and maintainability of suit.

7.6. The said official liquidator Mr. Patwa, through its deed of declaration

dated 16/12/2002 declared that Applicants are owners of the suit Godown No. 16 as Applicants had paid Rs.20,000/- though the Sale Deed was not executed by the company prior to its liquidation.

7.7. On the 21/01/2003, the official liquidator Mr. Patwa informed Applicant No. 1 that the tenancy has been attorned to Respondent Nos. 1 to 6 and directed Applicant No. 1 to pay monthly rent to Respondent No. 1 from 01/12/2002, along with arrears, if any.

7.8. Correspondence ensued between the Applicants and the official liquidator, through Advocate, on 28/02/2003 and 15/03/2003 about status of parties vis-a-vis the suit Godown no. 16.

7.9. The Respondent Nos. 1 to 6 filed the said suit seeking decree of eviction and permanent injunction against the Applicants in respect of the suit premises. The suit was filed on the ground of erection of permanent structure in the suit premises without permission of the landlord and for illegal sub-letting the suit premises to Respondent No. 7 (Defendants No. 2) i.e. u/s. 16(1)(b) and 16(1)(e) of MRC Act.

7.10. On the 06/10/2003, the Applicants filed Suit No. 4000 of 2003 in this Court challenging the Conveyance Deed dated 12/12/2002 in favor of Respondent Nos. 1 to 6. This suit was transferred to the City Civil Court due to change in pecuniary jurisdiction and the same is pending.

7.11. In 2005, the Applicants filed L.C. Suit No 2552 of 2005 in the City Civil Court at Mumbai against the Original owner-New Sun Mills Company Limited for specific performance to execute a registered lease deed as regards the suit land beneath and for the sale deed of the suit Godown no. 16.

7.12. On 26/09/2005, the City Civil Court rejected the plaint in L.C. Suit No. 2552 of 2005. The Applicants filed First Appeal No. 1240 of 2006 in this Court which is admitted and pending.

7.13. The Plaintiffs examined Plaintiff No.1-Damji and Plaintiff No.2-Nautam. The partner of Applicant No.1-Mahadeo S. Tamboskar examined himself. Both parties filed documentary evidence.

7.14. Learned Trial Judge on appreciation of evidence decreed the present suit, thereby directing the Defendants (including Applicants) to handover possession of the suit premises and also granted permanent injunction restraining Applicant/Defendant No. 1-Company permanently from constructing any shed towards south as well as the north or any other side on the compulsory open space of the suit Godown No. 16.

7.15. The present Revision Applicants/Defendant Nos 1, 5, and 6 filed the aforesaid appeal, challenging the eviction and injunction decree, which the Appellate Bench of the Small Causes Court, by impugned judgment and decree has dismissed. In these circumstances, the Applicants are before this Court.

7.16. On 21/11/2013, the Appellate Bench dismissed the said Appeal with costs.

7.17. After the impugned decree, Respondent Nos. 1 to 6/Original Plaintiffs and the official liquidator Mr. Patwa executed rectification deed on 23/11/2013 to include suit godown no. 16 in the conveyance of the year 12/12/2002.

7.18. It is in these circumstances, the Applicants have filed present Civil

Revision Application.

**RIVAL SUBMISSIONS**

8. Mr. Dhakephalkar, learned Senior Advocate appearing for the Applicants, submitted as under.

8.1. That the landlord-tenant relationship between the parties is seriously disputed. That the Applicants have become prospective purchasers in respect of the suit godown no. 16 (structure) in August 1981. That no notice u/s. 106 of the Transfer of Property Act, 1882 ('TP Act' for short) is given. That Small Causes Court cannot go into the title of the parties and therefore since the landlord-tenant relationship is under serious challenge, the decree of eviction passed under Rent Jurisdiction cannot be sustained. He submitted that the declaration of the official liquidator was shown to the Plaintiffs during evidence and Respondent No. 1 has admitted the same. He submitted that the stand taken by Respondent No. 2 (PW.-2) that 'due to want of complete knowledge and inadvertently' Plaintiff No 1 admitted Defendant No. 1's ownership, cannot be permitted in law.

8.2. He submitted that assuming that the remedy of seeking specific performance for execution of lease deed and sale deed is lost, the defence u/s. 53-A of TP Act continues to operate. He submitted that the said official liquidator has given a clear declaration that the Applicant No. 1 is owner of suit-godown, though no conveyance is executed by erstwhile owner. He submitted that in the said declaration, official liquidator has stated that the erstwhile company has sold suit-godown to Applicant No. 1 for Rs.20,000/- which amount is paid by Applicant No. 1 on the execution of agreement dated 01/08/1981.

8.3. He submitted that under letter dated 21/01/2003, the official liquidator has accepted that the Applicant No 1 is monthly tenant on monthly rent of Rs.650/-, which is the revised/reduced compensation. He submitted that by Advocate's notice dated 28/02/2003 itself, the Applicant No. 1-company has asserted its right as owner of the suit godown. He submitted that the declaration given by the official liquidator is relied upon by the Plaintiff themselves and it is too late to contend that it is not exhibited.

8.4. He submitted that the suit-godown is not transferred under conveyance deed and as such, the Plaintiffs have no right/title/interest in the suit-godown as a landlord. He submitted that reduction in rent clearly indicates that terms had been modified and the lease was restricted to suit-land only. He submitted that the order of interim compensation passed by this Court dated 21/08/2017 has merged in the order of Hon'ble Supreme Court dated 06/11/2017, by which the Applicants are directed to deposit interim rent @Rs.4,50,000/- only for the months of October, November and December, 2017 before 15/01/2018 and arrears and interest as directed by this Court has been stayed till disposal of the Civil Revision Application and hearing was expedited to be decided within 3 months. He submitted that in view of this order of Hon'ble Supreme Court, the Applicants are not obliged to deposit any further amount and Applicants have complied with the order of the Hon'ble Supreme Court. He submitted that no consequences are provided by Hon'ble Supreme Court.

8.5. He relied on following judgments in support of his case :

**i. Mahadeva & Ors. Vs. Tanabai [(2004) 5 SCC 88].**

**ii. Vasanthi Vs. Venugopal (Dead) through Legal Representatives**

**[(2017) 4 SCC 723].**

9. *Per contra*, Mr. Karande, learned Counsel for the Respondents (some of the plaintiffs) submitted as under.

9.1. That both the Courts have not gone into the issue of title and as such solitary sentence in a judgment cannot be considered. He submitted that Appeal Court has only touched the issue of ownership. He submitted that the view taken by the Courts below is reasonable and therefore this Court should not interfere in the limited jurisdiction u/s. 115 of the CPC or take a contrary view.

9.2. He submitted that there are no pleadings regarding protection u/s. 53-A of the TP Act either before Trial Court or Appeal Court and nothing is shown to the Court as an act done in furtherance with the contract to claim protection u/s. 53-A of TP Act. He submitted that there is no evidence about readiness and willingness. He further submitted that bar u/s. 16(c) of the Specific Relief Act, 1963 will also come into play and since there is nothing except oral submission about these aspects, the argument based on section 53-A of TP Act does not warrant consideration.

9.3. He submitted that the official liquidator Mr. Patwa has not been examined. He submitted that there exists landlord-tenant relationship and that the terms of the lease have been violated. He further submitted that as on 01/08/1981, which is the date of unregistered lease deed, Rs.20,000/- was not paid and the recital is that the amount of Rs.20,000/- shall be paid. He submitted that there is nothing to indicate that any effort was made to perform this clause. He submitted that no case is made out for payment of Rs.20,000/-. He submitted that Applicants have not produced receipt of

payment.

9.4. He further submitted that the alleged admission of P.W.-1 about Applicant No. 1 being owner has to be read with documentary evidence and cannot be read in isolation.

9.5. That under provision of section 54 of TP Act, mere 'contract for sale' does not create any interest in the immovable property. That the relationship between the earlier company and Applicant No.1 was of lessor and lessee and by conveyance-deed, the Plaintiffs have stepped into the shoes of lessor and accordingly tenancy has been attained.

10. Mr. Shaikh, learned Counsel appearing for the Respondents (remaining Plaintiffs) adopted the submissions made by Mr. Karande and further submitted as under.

10.1. That the order of Hon'ble Supreme Court cannot be interpreted to mean that the order of interim compensation was stayed. That therefore the Applicants are in contempt of this Court. That Applications have been filed seeking direction to Applicants to deposit interim compensation as directed by this Court, for permission to withdraw the amounts and also to fix time bound program for payment of interim compensation or vacating interim relief, for failure to deposit interim compensation.

10.2. That the declaration relied upon by the Applicants is not registered and should not be taken into consideration. He submitted that the grounds of permanent structure and illegal subletting are clearly made out.

10.3. Learned counsel Mr. Karande & Mr. Shaikh have relied upon following judgments in support of their submissions.

- i. A. Lewis and Anr. Vs. M.T. Ramamurthy & Ors. [(2007) 14 SCC 87]
- ii. Gandhe Vijay Kumar Vs. Mulji Alias Mulchand [(2018) 12 SCC 576]
- iii. Giryappa & Anr. Vs. Kamalamma & Ors. [2024 SCC OnLine SC 3849]
- iv. M/s. Bhimale and Sons and Another vs. Moti Dinshaw Irani and others [AIR OnLine 2024 BOM 1609]

## REASONS AND CONCLUSIONS

11. I have considered the rival submissions and perused the record.
12. For reasons that will follow, I find that there has been a jurisdictional error in the judgments of the Trial Court and the Appellate Court and I find that the Courts below have exercised a jurisdiction not vested in them by law. Hence I am interfering in the impugned judgment.
13. The Plaintiffs have come into the picture under the deed of conveyance dated 12/12/2002. The said deed of conveyance is executed by said Mr. Patwa acting as a Liquidator of earlier owner New Sun Mills Company Limited in favour Respondent Nos.1 to 6 being purchasers. This document is a 'foundational document' from which whatever right, title and interest of Respondent Nos. 1 to 6 (Plaintiffs) flows.
14. The said deed of conveyance clearly mentions in clause No.(iv) as under:

“(iv) The said Arvind Engineering Company is the Owner of a Godown being Godown no. 16 on the said Tenanted premises.”
15. Clause No.1 of the said conveyance deed reads as follows :

“NOW THIS INDENTURE WITNESSETH THAT :

  1. In pursuance of the said Agreement and in consideration of the sum of Rs.5,40,000/-(Rupees Five Lacs Forty Thousand Only) paid by the

Purchasers to the Vendor on or before the execution hereof being the full consideration payable by the Purchasers to the Vendor (the payment and receipt whereof the Vendor doth hereby admit and acknowledge and of and from the same and every part thereof doth hereby acquit, release, and discharge the Purchasers for ever) the Vendor doth hereby grant, sell, convey, transfer and assure all that piece or parcel of land admeasuring 634.27 Sq. Yds equivalent to 530.33 Sq Mtrs or thereabouts and forming part of the said larger property bearing Cadastral Survey No. 160 of Lower Parel Division at Sun Mill Compound, Lower Parel, Mumbai 400 013, and more particularly described in the Second Schedule hereunder written TOGETHER WITH all liberties, privileges, easements, profits, advantages, rights, members and appurtenances whatsoever to the said piece or parcel of land or any part thereof belonging or in any wise appertaining to or with the same or any part thereof now or at any time heretofore usually held, used, occupied or enjoyed therewith or reputed or known as part or member thereof belong or be appurtenant thereto but without the said Godown No. 16 belonging to said Arvind Engineering Company AND ALSO TOGETHER WITH all the deeds, documents, writings, vouchers and other evidences of title relating exclusively to the said piece or parcel of land or ground or any part thereof AND ALL THE estate, right, title and interest use, inheritance, property, possession, benefit, claim and demand whatsoever at law and in equity of the Vendor in to out of or upon the said piece of parcel of land or any part thereof AND ALSO TOGETHER WITH the unrestricted right of way hereby expressly given by the Vendor as specifically recorded hereafter (all of which are hereafter for brevity's sake referred to as "the said PREMISES") TO HAVE AND TO HOLD all and singular the said premises hereby granted released, conveyed and assured and intended or expressed so to be with their and every of their rights members and appurtenances unto and to the use and benefit of the Purchasers BUT SUBJECT to the said tenancy rights of the said Messrs. Arvind Engineering Company and ALSO SUBJECT to the payment of all rents, rates, taxes, assessments, dues and duties now chargeable upon the same or hereinafter to become payable to the State of Maharashtra and the Brihan Mumbai Mahanagar Palika or any other Public Body or Authority in respect thereof."

(emphasis supplied)

16. Also, the said deed of conveyance has two schedules, first schedule describing the larger property of the earlier owner and second schedule describing premises being conveyed. Second Schedule reads as under :

“Schedule II

ALL That piece or parcel of land of Foras Tanure (now redeemed) admeasuring 634.27 Sq. Yds Equivalent to 530.33 Sq. Mtrs or thereabouts which forms part of larger piece or parcel of land admeasuring 52127 Sq. Yds equivalent to 43583 Sq. mtrs or thereabouts according to the title deeds and situate at Sun Mill Road, Mumbai in the Registration District and Sub-District of Mumbai City and Mumbai Suburban and bearing New Survey Nos. 1/2754, 2/2748, 1/2755, 2/2755, 3/2755, 1/2752, 2/2752, 1/2749 and 3/2752 and Cadastral Survey No. 160 of Lower Parel Division 3/2840, 3/2841, 2842, 2843, 1/2844, 1/2845, 2846, 2/2846, 2848, 1/2849, 4/2849 and 2860 and 1-2/2845 and Cadastral Survey No. 160 of Lower Parel Division, assessed by the Assessor & Collector of Municipal Taxes under Ward No. GS 1041 (6) and bounded as under:-

On the South property of Messrs. Mahavir Industries  
On or towards the North by the property of Kiv Trading Co.  
On or towards East the Dhanran Mills Compound and On or towards the West by Internal Road to Sun Mill Compound”

17. Therefore it is clear that suit godown is clearly and expressly excluded from the conveyance deed. It is not part of second schedule. It is stated to be owned by Applicant No. 1. With such clear recitals in place, in my view, the Plaintiffs have not received any right, title or interest in the suit-godown. The situation of suit premises is rather peculiar. But the Respondent Nos. 1 to 6 have taken it with open eyes and therefore can not claim anything beyond what is granted under conveyance deed.

18. The definition of landlord under section 7(3) of the MRC Act assumes importance. The landlord is defined to mean any person who is for the time being receiving or entitled to receive rent in respect of any premises. In the present case, the foundational document of the Plaintiffs (conveyance deed dated 12/12/2002) excludes the suit-godown and therefore, the Plaintiffs are not entitled to receive rent in respect of suit-godown and therefore not a

landlord. Hence the suit is not maintainable in the Rent Court. Since both the grounds of unlawful subletting as well as erection of permanent structure, so far as in respect of the suit-godown is concerned, obviously decree on the said grounds also cannot be sustained as suit itself is not maintainable.

19. Also, 'land' being excluded from the definition of 'premises' under section 7(9) of the MRC Act, suit for recovery of suit-land beneath could not have been and can not be entertained by the Rent Court.

20. Therefore the suit, as filed, is not maintainable. There is no landlord-tenant relationship. The Courts below had no jurisdiction to try and entertain the suit.

21. This objection about maintainability and dispute about landlord-tenant relationship is not being contested for the first time in High Court.

22. It is necessary to mention that Revision- Applicants/Defendant Nos.1, 5 & 6 have raised specific contention before the Courts below that Applicant No.1 is the owner of suit godown and as such Applicant No.1 is not governed by MRC Act. Accordingly, an additional issue no. 1 about the maintainability of the suit (suit between landlord and tenant) was framed. So also before the Appeal Court, it was specifically argued that the finding recorded by the Trial Court about the relationship of the landlord and tenant is perverse and therefore Point No.1 was framed as "whether the relationship of landlord and tenant is in existence between the Plaintiffs and Defendant No.1?"

23. Therefore it is clear that issue of landlord-tenant relationship has been

the bone of contention since beginning.

24. Perusal of the plaint shows that the suit premises consist of godown No.16 together with land beneath admeasuring 530.33 sq. mtrs. Therefore, admittedly suit premises is not only land or not only structure, however, it is land with structure.

25. The Applicants have taken a clear stand in their written statement that Applicant No.1 is the absolute owner of the suit-godown referred in the plaint. That the suit land was leased to Applicant No.1 by agreement dated 01/08/1981 for a period of 90 years and the structure (suit-godown) was given to Applicant No.1 on ownership. These pleadings do not indicate that Applicant No.1 claimed absolute ownership of the entire suit premises. Absolute ownership is claimed only for the suit-godown and not for the land beneath.

26. Despite this, the Trial Court while considering the aspect of maintainability of the suit and landlord-tenant relationship, has held that the Applicants on their own showing are lessees of suit premises (entire). The Trial Court has considered the agreement dated 01/08/1981 between the earlier owner New Sun Mills Company and the Applicant No.1 and the conveyance dated 12/12/2002, the attornment letter dated 21/01/2003 and Reply dated 28/02/2003 written by Applicant No.1, to hold that the relationship between the Applicant No.1 lessee and New Sun Mills Company continued with Respondent No.1 as a subsequent purchaser. The Trial Court has proceeded on the footing that Applicant No.1 is claiming absolute ownership in respect of entire suit premises. Such consideration of case is perverse in the teeth of basic pleadings in written statement. In that view of

the matter, the very understanding of the Trial Court about pleadings of the parties is perverse, vitiating the entire judgment.

27. Perusal of the Appeal Court judgment indicates that while considering the point of landlord - tenant relationship, Appeal Court held that the question for adjudication is “whether mere proposal and acceptance to transfer the ownership of Godown No.16 under the agreement dated 01/08/1981 confers title upon Defendant No.1”. In subsequent paragraphs, the Appeal Court has considered provisions of section 54 of Transfer of Property Act and has held that mere contract for sale does not create title or interest in the immovable property. The Appeal Court has considered that the agreement dated 01/08/1981 is un-registered document. The Appeal Court has then considered that the suit by Defendant No.1 for specific performance is rejected. The Appeal Court has further considered that except settlement of terms under said agreement dated 01/08/1981, nothing has happened thereafter and therefore, ownership rights cannot be said to have been acquired by Defendant No.1. The Appeal Court has discounted the declaration of the Liquidator because there is no registered sale deed or instrument in favour of Applicant No.1 and there is no other proof of payment of Rs. 20,000/- by Defendant No.1.

28. The Appeal Court was conscious of the fact that in the deed of conveyance in favour of Plaintiffs, it is mentioned the Applicant No.1 is the owner of the suit Godown, as can be seen from paragraph No.35 of the impugned Judgment.

29. It is therefore clear that the Appeal Court has treated the present suit as a suit where Applicant No.1 was expected to prove title. In my considered

view, in the present suit, such an issue did not arise and what was required to be considered was whether 'landlord - tenant relationship' existed between the parties about suit-godown.

30. The issue of title can be gone into only if a suit is being heard by a Civil Court, not by a Rent Court.

31. Perusal of the agreement dated 01/08/1981 executed between earlier owner New Sun Mills Company and Applicant No.1 indicates that there were two distinct agreements between the earlier owner and Applicant No.1. First agreement about extension of lease of suit-land at reduced rent and second agreement about sale of suit godown.

32. Whether Applicant No.1 has become absolute owner of the suit-godown and whether he can prove title to suit-godown by production of registered document or by showing payment of consideration of Rs.20,000/-, are irrelevant considerations for the purpose of present suit. It is material to note that the present suit is filed under provisions of MRC Act on the ground of unlawful sub-letting and permanent structure and it can be filed by the person who can be said to be a landlord.

33. This is not a title dispute between the Applicant No. 1 and erstwhile owner, between whom the agreement dated 01/08/1981 was executed. This is also not a suit for specific performance where the Applicant No.1 is expected to prove readiness and willingness or entitlement to sale deed.

34. The document of declaration by the said Mr. Patwa produced by the Plaintiffs themselves, records as under:

"4. By the said Agreement to Lease, the said Company sold to the said

Arvind Engineering Company the said Godown No. 16 standing on the said tenanted premises at or for the price of Rs.20,000/- which amount the said Arvind Engineering Company paid to the Company on the execution of the said Agreement dated 1<sup>st</sup> August 1981."

(emphasis supplied)

35. After the Liquidator issued letter of attornment dated 21/01/2003, Applicant No.1 through its advocate letter dated 28/02/2003 has taken immediate stand that under agreement dated 01/08/1981 it has paid Rs.20,000/- as price of the suit-godown and has become owner of the same (structure) and pointed out that the letter of attornment qua the structure suit-godown requires suitable modification.

36. Plaintiff No.1 Damji Gelabhai Shah (P.W.-1) in cross examination has admitted the said declaration and contents thereof. He further admitted that before purchasing the suit premises, they have not issued public notice and that as on the date of evidence, Applicant No.1 is owner of the suit-godown. This indicates the manner in which the Plaintiffs considered themselves vis-a-vis the suit premises.

37. Plaintiff No.2 Mr. Nautam D. Shah (P.W.-2) who is son of P.W.-1 has stated that P.W.-1 who is his father is a retired person and for want of complete knowledge and inadvertently P.W.-1 has stated in the cross examination admitting Applicant No. 1 as owner of the suit-godown.

38. With such record, the Plaintiffs cannot contend that they are landlords of the suit godown. Therefore the relationship of landlord and tenant is not in existence, so far as the suit-godown is concerned. Therefore, the suit as filed under provisions of the MRC Act is not maintainable.

39. For the aforesaid reasons, the finding of landlord-tenant relationship in respect of suit-godown, arrived at by both the Trial Court as well as the Appeal Court is found based on perverse appreciation and misreading of pleadings and evidence and if allowed to stand, would amount to miscarriage of justice. Therefore the same is being interfered with, drawing support from paragraph 10 of the Judgment of the Hon'ble Supreme Court in **Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav [1965 SCC OnLine SC 83]** and paragraph 43 of the Judgment of the Hon'ble Supreme Court in **HPCL Vs. Dilbahar Singh [(2014) 9 SCC 78]**.

40. Considering that the landlord – tenant relationship is not found in a peculiar facts of this case, the judgment of **M/s. Bhimale and Sons and Another (supra)** will not advance the case of the Respondents. Further considering the fact that the arguments about Section 53-A of the T.P Act are necessarily connected to protection of possession in a civil suit and since that aspect is not being considered, the judgments of **A. Lewis and Anr. (supra)**, **Giriappa and Another (supra)**, **Vasanthi Vs. Venugopal (supra)**, **Mahadeva & Ors.(supra)**, need not be considered.

41. Since this Court is not re-appreciating the evidence about any ground under MRC Act, the judgment in case of **Gandhe Vijay Kumar (supra)** will not advance the case of the Respondents.

42. In view of the aforesaid facts and circumstances, the Revision Application is allowed. Both, the impugned judgment and decree dated 21/11/2013 passed in Appeal No.316 of 2007 and Judgment decree of eviction dated 03/04/2007 passed in R.A.E. Suit No. 517/783 of 2003 are quashed and set aside. The suit, as filed, is held as non-maintainable. The

Respondent Nos. 1 to 6 are at liberty to file appropriate proceedings against the Applicants for recovery of possession in accordance with law.

43. In view of disposal of Civil Revision Application, pending interim applications are also disposed of in above terms.

44. All concerned to act on duly authenticated or digitally signed copy of this order.

**(M.M. SATHAYE, J.)**