

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

CIVIL REVISION APPLICATION NO. 124 OF 2026

Vipul Gopaldas Ashar & anr. ..Applicants
Versus
Virendra Girdharilal Khandelwal ...Respondent

**WITH
CIVIL REVISION APPLICATION NO. 143 OF 2026**

Vipul Gopaldas Ashar & anr. ..Applicants
Versus
Chandrakanta Virendra Khandelwal ...Respondent

Mr. Dhruva Gandhi, a/w Mr. Mihir Kakade, & Mr. Himagn
Malik i/b Jayakar & Partners, for the Applicants.
Mr. S A Abhyankar a/w Ms. Anjali Helekar & Ms. Apurva
Mhatre, for the Respondent.

CORAM : N. J. JAMADAR, J.
DATE : 24th MARCH 2026

ORDER :

1. These Civil Revision Applications are directed against orders dated 21st November, 2025, passed by the learned Judge, City Civil Court, in the Notices of Motion taken out by the applicants/defendants, for the rejection of the plaints in SC Suit Nos. 43/2018 and 44/2018, instituted by the respondents in the respective applications, whereby the said Notices of Motion were rejected.

2. The respondent in each of the applications/plaintiffs are the co-owners of the premises situated at CTS No. 371, Malad, Mumbai. The Respondents had developed the said premises and constructed residential and commercial premises therein.

2.1 The plaintiff in SC Suit No. 43/2018 claimed that, Flat No. 102 and 401 in the said building came to be allotted to the plaintiff. Flat No. 102 had been given on leave and licence. The defendants/applicants desired to occupy the said flat as licensee, for a term of 11 months commencing from February, 2013 to January, 2014. An aggregate amount of Rs. 11,00,000/- towards the licence fee at the rate of Rs. 1,00,000/- per month was paid by the defendants. However, the defendants did not execute the leave and licence agreement.

2.2 Instead, the defendants in connivance with the Advocate to whom the parties had approached to draft the leave and licence agreement, prepared a false and forged document, purportedly executed on 15th February, 2013 to the effect that the plaintiff had agreed to sell Flat No. 102 and her undivided right, title and interest in the subject property. Thus, the plaintiff instituted the suit asserting that, the defendants were the trespassers and for the necessary declaratory and consequential reliefs.

2.3 In SC Suit No. 44/2018, the respondent/plaintiff has made identical averments, with the change that the defendants had agreed to occupy Flat No. 601 on leave and licence basis.

2.4 It would be contextually relevant to note, the applicants/defendants contend that the plaintiffs had agreed to sell the suit flats and the other properties by executing a writing dated 15th February, 2013; which incorporated the terms of the contract between the parties to sell the subject flats. Under the said contract for sale, the plaintiffs accepted part consideration and put the defendants in possession of the subject flats and, therefore, the defendants were constrained to institute the suits against the plaintiffs herein seeking specific performance of the said contract. To give a counter blast, the plaintiffs herein have instituted the instant suits raising false contentions.

2.5 In the instant suit, the applicants/defendants took out the Notices of Motion seeking rejection of the plaint on multifold grounds including that, the suit for eviction of licensee was barred by the provisions contained in the Maharashtra Rent Control Act, 1999 ('the Act, 1999'), and, even otherwise, the suit was *ex facie* barred by law of limitation, as it was instituted beyond three years of the purported knowledge of the plaintiff

that, the writing dated 15th February, 2013 was forged and the defendants had allegedly practiced fraud on the plaintiffs.

2.6 By the impugned order, the learned Judge, City Civil Court rejected the Notices of Motion observing *inter alia* that, there was no leave and licence agreement in writing and, therefore, the bar to the jurisdiction of the City Civil Court, cannot be countenanced. It was further observed that, on the basis of the averments in the plaint, it appeared that the suit was instituted within the prescribed period of limitation from the date of knowledge of the offending transactions.

2.7 Being aggrieved, the applicants/defendants have invoked the revisional jurisdiction of this Court.

3. I have heard Mr. Dhruva Gandhi, the learned Counsel for the applicants, and Mr. S A Abhyankar, the learned Counsel for the respondents. The learned Counsel for the parties took the Court through the averments in the plaint and the material on record.

4. Mr. Gandhi canvassed a two-pronged submission. First, on the own showing of the plaintiff, the applicants were inducted in the subject flat as licensee. If that is the case, the

City Civil Court has no jurisdiction to entertain, try and determine the suit for recovery of possession of the licenced premises from an erstwhile licensee and only the Competent Authority appointed under Section 40 of the Act, 1999, has the exclusive jurisdiction under Section 24 of the Act, 1999.

5. Secondly, even if the case of the plaintiff is taken at par, the suit is *ex facie* barred by limitation. In the plaint, the plaintiffs averred that they became aware of the alleged fraudulent document dated 15th February, 2013 and the fraud practiced on the plaintiffs, only upon being served with the papers and proceedings in the suits instituted by the defendants.

6. Attention of the Court was invited to the interim order dated 10th May, 2013 passed by the learned Judge, City Civil Court in the Notices of Motion taken out by the defendants in the said suit. It was submitted that, the institution of the suit in the year 2018, after the service of the papers and proceedings in those suits in the year, 2013 itself, was clearly barred by limitation.

7. In contrast to this, Mr. Abhyankar, the learned Counsel for the respondents/plaintiffs, resisted the submissions on behalf

of the applicants. Emphasis was laid on the fact that, the very document dated 15th February 2013 which is pressed into service on behalf of the defendants, dismantles the case of the defendants. The defendants have even not paid the deficit stamp duty on the said fraudulent document which was impounded by the trial Court for adjudication of the stamp duty. Mr. Abhyankar further urged that, the conduct of the defendants also deserves to be taken into account as they have not deposited the balance consideration, as directed by the Court, and, thus, the interim reliefs in their suits stood vacated. The defendants who are in the unauthorized occupation of the subject flats have filed these applications to further delay the disposal of the suits, urged Mr. Abhyankar.

8. From the perusal of the averments in the plaint and the material on record, it *prima facie* appears that the essential contest between the parties revolves around the nature of the jural relationship. On the one hand, the plaintiffs assert that, the defendants came in possessions of the subject flats as licensee thereof, and under the pretext of execution of leave and licence agreement, a fraudulent document showing that the plaintiff had sold the subject flats was brought into force. On the other hand, the defendants claimed that, the transaction

between the parties was that of sale of the subject flats and there was never any relationship of licensor or licensee between the plaintiffs and the defendants.

9. Keeping in view the aforesaid broad nature of the controversy between the parties, the averments in the plaint and the document annexed with it, are required to be appraised so as to decide whether plaintiffs deserve to be rejected, as being barred by any law. From the perusal of the averments in the plaint, it becomes evident that, the plaintiffs have asserted that, the defendants entered into the possession of the subject flat as licensee. The entire licence fees was paid upfront. However, the defendants did not execute the leave and licence agreement. Thus, the defendants are the trespassers.

10. In the backdrop of the aforesaid assertions in the plaint, Mr. Gandhi would urge that, the fact that the leave and licence agreement is not forthcoming, does not make any significant difference in the matter of jurisdiction of the Competent Authority to consider the prayer for eviction of the persons who are stated to be the licensees.

11. To lend support to this submission, Mr. Gandhi placed reliance on the judgments of this Court in the case of ***Mukesh***

*Dharsibhai Thakkar Vs. Rajnikant Ramanlal Gunderia & ors.*¹, and another Division Bench judgment in the case of *Nagin Mansukhlal Dogli Vs. Haribhai Manibhai Patel*², which was affirmed in the *Mahadev P. Kambekar (Dead) through LR's Vs. Shree Krishna Woolen Mills Pvt. Ltd*³.

12. Evidently, there is no agreement in writing to evidence the relationship of licensor or licensee between the parties. The Explanation to Sub-section (3) of Section 24 of the Act, 1999 *inter alia* provides that an agreement of licence in writing shall be conclusive evidence of facts stated therein. In the case of *Mukesh Thakkar Vs. Rajnikant Gunderia (supra)*, on which reliance was placed by Mr. Gandhi, this Court enunciated that in the face of an agreement of licence in writing, it will not be open for a party to lead evidence to show that, the transaction was not of leave and licence but that of tenancy. Notwithstanding the absence of the agreement of licence in writing, Mr. Gandhi would urge, the competent authority only would have the jurisdiction.

1 2016 SCC OnLine Bom 731

2 AIR 1980 Bom 123

3 (2020) 14 SCC 505

13. The aforesaid submissions deserve consideration in the context of the averments in the plaint and the tenor of the plaintiffs claim. In substance, the plaintiffs are contesting the jural relationship between the parties. It is trite, a party can question the character of the document. There is a difference between challenge to the content of the documents and the challenge to its character. A party is entitled to demonstrate that, the document in question does not represent the bargain which the parties intended to arrive at.

14. In the case at hand, the Court finds that, it is the stated case of the defendants that, they were put in possession of the subject flats under the terms of the purported agreement for sale dated 15th February, 2013. The defendants have not at all referred to, much less admitted, the antecedent relationship between the parties. In such a situation, where there is material to indicate that, a party has disputed the character of its occupation, the jurisdiction of the Civil Court is not instantaneously ousted. The question of jurisdiction would then merit adjudication.

15. A useful reference in this context can be made to a three-Judge Bench judgment of the Supreme Court in the case of

Natraj Studios (P) Ltd. Vs. Navrang Studios & anr.⁴, wherein the legal position expounded as under :-

“18. Thus exclusive jurisdiction is given to the Court of Small Causes and jurisdiction is denied to other Courts (1) to entertain and try any suit or proceeding between a landlord and a tenant relating to recovery of rent or possession of any premises, (2) to try any suit or proceeding between a licensor and a licensee relating to the recovery of licence fee or charge, (3) to decide any application made under the Act and, (4) to deal with any claim or question arising out of the Act or any of its provisions. Exclusive jurisdiction to entertain and try certain suits, to decide certain applications or to deal with certain claims or questions does not necessarily mean exclusive jurisdiction to decide jurisdictional facts also. Jurisdictional facts have necessarily to be decided by the Court where the jurisdictional question falls to be decided, and the question may fall for decision before the Court of exclusive jurisdiction or before the Court of ordinary jurisdiction. A person claiming to be a landlord may sue his alleged tenant for possession of a building on grounds specified in the Rent Act. Such a suit will have to be brought in the Court of Small Causes, which has been made the Court of exclusive jurisdiction. In such a suit, the defendant may deny the tenancy but the denial by the defendant will not oust the jurisdiction of Court of Small Causes. If ultimately the Court finds that the defendant is not a tenant the suit will fail for that reason. If the suit is instituted in the ordinary Civil Court instead of the Court of Small Causes the plaint will have to be

4 (1981) 1 SCC 523

returned irrespective of the plea of the defendant. Conversely a person claiming to be the owner of a building and alleging the defendant to be a trespasser will have to institute the suit, on the plaint allegations, in the ordinary Civil Court only. In such a suit the defendant may raise the plea that he is a tenant and not a trespasser. The defendant's plea will not straightaway oust the jurisdiction of the ordinary Civil Court but if ultimately the plea of the defendant is accepted the suit must fail on that ground. So the question whether there is relationship of landlord and tenant between the parties or such other jurisdictional questions may have to be determined by the Court where it falls for determination- be it the Court of Small Causes or the ordinary Civil Court. If the jurisdictional question is decided in favour of the Court of exclusive jurisdiction the suit or proceeding before the ordinary Civil Court must cease to the extent its jurisdiction is ousted."

16. If a party has set up a jural relationship, which is not governed by the special enactments, then the plaintiff is entitled to institute the suit in the ordinary Civil Court considering the defendant to be a trespasser. A useful reference in this context can be made to a judgment of the Supreme Court in the case of ***Abdulla Bin Ali & ors. Vs. Calappa & ors***⁵., wherein it was enunciated that, when the Defendants therein denied the title of the Plaintiffs and the tenancy, the Plaintiffs filed a suit treating

5 (1985) 2 SCC 54

them to be trespassers and the suit was not on the basis of relationship of landlord and tenant between the parties, and on the denial of the tenancy and the title of the Plaintiffs – Appellants, the latter filed a suit treating the Defendants therein to be trespassers and the suit against the trespassers would lie only in the Civil Court and not in the revenue Court. Thus, in the light of the denial of the tenancy by the Defendants, the suit was cognizable by the Civil Court.

17. The plaintiffs have instituted the suit with a clear assertion that, the applicant/defendants are the trespassers. Thus, submission on behalf of the defendants/applicants premised on the bar of jurisdiction contained in the Maharashtra Rent Control Act, 1999, does not merit acceptance.

18. On the aspect of the bar of limitation, it may be apposite to note that, the fact that the plaintiffs are the co-owners of the suit property is rather incontrovertible. The plaintiffs claimed that, the defendants are the trespassers and, thus, seek recovery of possession of the subject flats. The reliefs in the plaint are thus in assertion of the proprietary title of the plaintiffs over the subject flats. As the claim of the plaintiff for recovery of possession of the subject flats rests in ownership

thereof, the claim of the plaintiffs cannot be confined to the declaration sought by the plaintiffs that purported writing between the parties dated 15th February, 2013 is illegal, bad in law, void and not binding upon the plaintiffs.

19. In the circumstances of the case, it cannot be said that, the relief of the recovery of possession of the subject flats inexorably flows from the declaration of the character of the writing dated 15th February, 2013 only. Rather, the suit appears to have been instituted on the basis of title of the plaintiffs over the suit subject properties. Resultantly, even if one part of the cause of action survives, the suit must proceed to trial. There can be no rejection of the plaint in part.

20. From the aforesaid standpoint, the question as to whether the suits are barred by law of limitation, thus assumes the character of a mixed question of facts and law and, therefore, the learned Judge, City Civil Court was justified in declining to reject the plaint on the ground that, the reliefs are *ex facie* barred by limitation.

21. For the foregoing reasons, the Revision Applications deserve to be rejected.

22. Hence, the following order :-

:: O R D E R ::

- i) The Civil Revision Applications stand rejected.
- ii) No costs.

[N. J. JAMADAR, J.]