IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL REVISION APPLICATION NO. 165 OF 2025

Nikhil Subhashrao Dhuldhar Age @ 32 years, Occ – Business R/o. Dreamland Business Park, Amravati, Tq. & Dist. Amravati	**.. Applicant** **(Original Defendant)**

Versus

1) Mohanlal Kanhaiyalal Kewlani Age @ 55 years, Occ – Business 2) Shankar Kanhaiyalal Kewlani Age @ 51 years, Occ – Business, Both R/o. Rampuri Camp, Amravati, Tq. & Dist. Amaravati	**.. Respondents** **(Original Plaintiffs)**

Mr. S.M.Vaishnav, Advocate for applicant.
Mr. S.S.Sarda, Advocate for respondents.

CORAM : ROHIT W. JOSHI, J.

DATED : APRIL 01, 2026

ORAL JUDGMENT

(1) Heard finally with the consent of the learned counsel appearing for the parties.

(2) The present Civil Revision Application takes exception to order dated 18/11/2025, passed by the learned 19th Joint Civil Judge Senior Division, Amravati on an application below Exh.12 in R.C.S.No. 395/2024.

(3) The present respondents have filed the aforesaid suit inter-alia seeking declaration that they are in actual physical possession of the suit property and that the defendants should not dispossess them without following due process of law.

(4) It is the case of the plaintiffs that they are in occupation of the suit property as tenants of Late Anil Kewlani, who is their real brother. It is stated that the tenancy was created by virtue of an oral understanding between the plaintiffs as tenants and said Mr.Anil Kewlani as landlord and accordingly the plaintiffs were placed in possession of the suit property upon creation of tenancy since 18/07/2017. The plaint also states that on 11/04/2018 a written agreement was executed between the plaintiffs and the alleged landlord, Mr.Anil Kewlani. As per the plaint averments the tenancy is a monthly tenancy and the rent payable is Rs.8000/- p.m. It is stated in the plaint that the plaintiffs had also paid an amount of Rs.25,00,000/- to the alleged landlord, Mr.Anil Kewlani on the date of creation of tenancy.

(5) It is not in dispute that prior to institution of the present suit, the plaintiffs had filed a suit being R.C.S.No. 260/2024 against legal heirs i.e. daughter and mother of alleged landlord, late Mr.Anil Kewlani and Punjab National Bank (PNB). The pleadings with respect to said suit are incorporated in paragraph 5 of the plaint. It is stated that plaint in the said civil suit was rejected by the learned trial Court vide order dated 10/09/2024 and that the plaintiffs have not challenged the said order. The plaintiffs, however, claim that despite the said order, they continue to be in possession of the suit property. There is a statement in paragraph 6 of the plaint that Punjab National Bank had allegedly taken possession of the suit property by breaking open the locks and removing the seal of the suit property. It is further stated that the Bank had also lodged a complaint against plaintiff No.1 on the basis of which an offence under Section 326(c), 329(3) and 329(4) of Bharatiya Nyaya Sanhita, 2023 is registered against plaintiff No.1.

(6) The defendant filed an application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint on the ground that the averments therein indicated that the plaint in earlier suit filed by the plaintiffs against the bank and the legal heirs of the alleged landlord had been rejected on the ground that the suit was barred by Section 34 of the SARFAESI Act.

(7) The plaintiffs opposed the application contending that the cause of action in both suits is different and that the present suit was filed only in order to seek injunction against the defendant/auction purchaser to the effect that possession of plaintiffs should not be disturbed without following due process of law.

(8) The learned trial Court rejected the application, holding that the plaintiffs had not sought any relief under Section 17 of the SARFAESI Act and, therefore, the bar under Section 34 would not be attracted. The learned trial Court held that the secured creditor had already accomplished measures under Section 13 of the SARFAESI Act and that the plaintiffs had not filed the suit in order to challenge the same. According to the learned trial Court, the plaintiffs had come up with a simple case of being in possession of the suit property with a prayer for injunction that the same should not be disturbed without following due process of law.

(9) Mr.Vaishnav, learned counsel for the revision-petitioner/defendant contends that the defendant is claiming right over the suit property as an auction purchaser, who has purchased the suit property in auction conducted by the bank invoking Section 13(4) of the SARFAESI Act, and as such the defendant was claiming through the bank which was arrayed as defendant No.1 in the earlier suit.

(10) He contends that the plaint in the earlier suit was rejected which is an admitted fact as can be seen from the plaint averments in the present suit. The learned counsel contends that since the plaintiffs' suit against the bank and the legal heirs of borrower had failed by an order of rejection of plaint, the plaintiffs could not seek any relief against the defendant, who is an auction purchaser claiming through the bank and legal heirs of the borrower.

(11) Per contra, learned counsel for the respondents/ plaintiffs argues that the plaintiffs have come up with a specific case that despite the order passed under Section 14, the plaintiffs continued to hold possession of the suit property and have prayed for relief of perpetual injunction that their possession should not be disturbed without following due process of law which is a common law right. He contends that the Civil Court will have the jurisdiction to grant such relief of injunction against dispossession without following due process of law. As regards rejection of plaint in the earlier suit, the contention of the learned counsel is that in the earlier suit the action taken by the bank was questioned, whereas in the present suit injunction is sought on the basis of threat to dispossess by the defendant.

(12) Before coming to merits of the matter it will be appropriate to refer to the prayers in the earlier civil suit and present suit. In the previous civil suit filed against the bank and legal heirs of the alleged landlord/borrower, the plaintiffs have sought the following reliefs :-

> *i. Plaintiffs are tenants and as such in lawful possession of the suit property.*

> *ii. Bank cannot dispossessed plaintiffs without getting the claim of tenancy adjudicated.*
>
> *iii. Declare that defendant No.1 bank acted in collusion with the borrower/landlord (Mr. Anil Kewlani).*
>
> *iv. Declaration that tenancy rights of plaintiffs have overriding effect upon order dated 29/06/2024 passed by Chief Judicial Magistrate under Section 14 of the SARFAESI Act and;*
>
> *v. Injunction against defendant No.1 bank from taking possession without following due process of law as is required to be followed for eviction of a tenant.*

(13) As against this, the prayers in the present suit are as under :-

> i. *Declaration that plaintiffs are in actual possession of the suit property and that they cannot be evicted without following due process of law.*
>
> ii. *Perpetual injunction restraining defendant from taking forcible possession of the suit property.*

(14) It cannot be disputed that the revision petitioner/ defendant is claiming right over the suit property through bank and the legal representatives of alleged landlord/borrower.

(15) It is apparent from the reading of the plaint that the borrower/alleged landlord was real brother of the plaintiffs. The plaintiffs have come up with a case that they are in possession of the suit property as tenants. The claim of tenancy is based on an unregistered agreement dated 11/04/2018. It is stated in the plaint that the tenancy was initially created orally on 18/07/2017 when plaintiffs were placed in possession of the suit property. It is also stated that an advance amount of Rs.25,00,000/- was paid by the plaintiffs to the landlord/borrower at the time of creation of tenancy. It is further stated that the monthly rent was Rs.8,000/-. Filing of earlier suit and rejection of plaint therein is not in dispute.

(16) The plaint averments in the present case will have to be scrutinized carefully having regard to the peculiar backdrop of the case. The plaint averments are required to be read meaningfully in the light of the documents filed on record by the plaintiffs.

(17) The plaintiffs have not made any statement regarding payment of rent to the landlord/borrower in the plaint. The plaint merely asserts that the agreed rent was Rs.8,000/-p.m., however, there is no positive statement regarding payment of rent. This assumes significance, as the plaintiffs claim to be tenants since the year 2017 and the suit has been filed in the year 2024. There is no statement or any material with respect to payment of rent.

(18) The plaintiffs have stated in paragraph 2(c) of the plaint that an amount of Rs.25,00,000/- was paid to the landlord/borrower on the date of creation of tenancy. This amount is stated to be deposited as an advance amount which the landlord/borrower had agreed to repay on the date on which the possession was to be returned. The mode and manner in which the amount of Rs.25,00,000/- was paid is not mentioned. Likewise no material is filed on record in support of this contention.

(19) Although it is averred in paragraph 4 of the plaint that the plaintiffs are engaged in the business of sale of clothes from the suit shop, the name of the business undertaking is not mentioned in the plaint. Furthermore, the plaint is also silent as regards the character of the business undertaking i.e., whether the plaintiffs are carrying on the business as a family business, or in partnership, or separately as individual proprietors.

(20) Plaintiffs are aware about action taken under Section 13(4) and order passed under Section 14. However, the plaintiffs have not specifically asserted that possession was not taken by the bank pursuant to order passed by learned Chief Judicial Magistrate under Section 14 of the SARFAESI Act. However they assert that they continue to remain in possession of the suit property. The plaintiffs do not elaborate as to how they have retained possession despite action taken under Section 13(4) and order under Section 14 of the SARFAESI Act.

(21) The foundation of the case of the plaintiffs is that they are in occupation of the suit property as tenants. The plaintiffs do not have any registered document in support of claim of tenancy. The alleged landlord is deceased brother of plaintiffs. The fact that the property was mortgaged with Punjab National Bank, is not disputed by the plaintiffs. It is also not in dispute that PNB has taken action against the suit property in exercise of powers under Section 13(4) of the SARFAESI Act. In such circumstance, in the considered opinion of this Court, it was necessary for the plaintiffs to seek a declaration of their status as tenants over the suit property. The plaintiffs had sought this declaration in the earlier suit, however, in the present suit, the plaintiffs have refrained from seeking such declaration. The plaintiffs have simply sought injunction that they should not be dispossessed from the suit property without following due process of law. Since there is a serious cloud over the plaintiffs' title as tenants/lessees of the suit property, it was necessary for the plaintiffs to seek the said declaration. The plaintiffs have avoided to seek such declaration although the same was sought in the earlier suit. In view of the clear cloud over the title, a suit simplicitor for injunction is, not maintainable.

(22) Normally whether a prayer for declaration of title is necessary or not should be decided in the light of rival pleadings and evidence on record. However, in the cases like the present where the intention behind filing this suit is exhibited on the face of record, the said aspect can be looked into even under Order VII Rule 11 of CPC. The intent of the plaintiffs to defeat the right of auction purchaser, after having suffered order of rejection of plaint in the earlier suit filed against the bank is apparent on the face of record. The foundation of the case is alleged claim of tenancy which is not supported by any cogent material. In such circumstances, it must be held that the suit simplicitor for injunction is barred in the absence of any prayer for declaration of title that plaintiffs are tenants of the suit property.

(23) The claim of plaintiffs is that they are in possession of the suit property as tenant. Plaint in the earlier suit filed by them wherein prayer for declaration that plaintiffs where in occupation of the suit property as tenant and that the alleged tenancy rights have overriding effect over the order passed by the Chief Judicial Magistrate under Section 14 is rejected. The said order is not challenged further and has attained finality between the parties. Although *res judicata* in strict sense may not be applicable, it must also be kept in mind that foundation of relief in the earlier suit as also the present suit is based on alleged claim of tenancy. The plaintiffs as stated above have refrained from seeking a declaration with respect to alleged tenancy in the present case. The prayer for injunction is completely based on claim of alleged tenancy. Having been unsuccessful in seeking declaration of tenancy against the bank and the borrower, the plaintiffs cannot make the same thing against the auction purchaser who has purchased the property belonging to the borrower in an auction conducted by the bank.

(24) Perusal of paragraph 9 of the plaint indicates that the plaintiffs were aware that the defendant had purchased the suit property from the bank under SARFAESI proceeding. Perusal of said paragraph will further indicate that the plaintiffs were aware that according to the bank the defendant was placed in possession of the suit property by the bank. The said fact can also be gathered from reading of paragraph 6 of the plaint. However, the plaintiffs have not challenged the order passed by the learned Chief Judicial Magistrate under Section 14 of the SARFAESI Act or the panchanama regarding delivery of possession of the suit property to the defendant. Although he is aware about the claim of the bank and the defendant regarding delivery of possession of the suit property by the bank to the defendant, there is no positive statement in the plaint that bank has not taken possession. There is a bare assertion that the plaintiffs are in possession of the suit property without any elaboration or material to establish possession.

(25) The plaintiffs have not filed any documentary evidence with respect to payment of rent. The case of plaintiffs is based on an unregistered lease deed allegedly executed in their favour by their real brother. The plaintiffs claimed that although the lease deed is executed on 11/04/2018, the lease had commenced from 18/07/2017. This circumstance of not filing any evidence with respect to payment of rent is required to be viewed in the backdrop of the fact that the borrower/alleged landlord is real brother of plaintiffs, who has expired. Action under Section 13(4) is taken by the bank against the brother of plaintiffs pursuant to which, suit property is sold in auction and possession is also taken pursuant to order passed under Section 14 of the SARFAESI Act. The contention of plaintiffs that they are in occupation of the suit property, cannot be accepted in the absence of any evidence with respect to payment of rent.

(26) In this regard, it must be stated that the Hon'ble Supreme Court has consistently stated in several decisions that in a given case although unregistered lease deed may be taken into consideration to accept the case of tenancy, in such cases, Courts should look for material in order to ascertain as to whether the claim of tenancy is bonafide or designed to frustrate action under SARFAESI Act. It is also held that the Courts must look for material evidence with respect to payment of rent. In this context it will be appropriate to refer to judgment of this Court in the case of ***K.S.Dhondy vs. Her Magesty the Queen of Netherlands reported in 2011(3)Mh.L.J. 128***; wherein this Court has observed in paragraph 11 as under :-

> *"11. .... By now, it is well settled that it is necessary for the plaintiff to plead facts necessary to set out a specific cause of action against a party which cause of action can be ascertained on the basis of material produced before the Court in the nature of documents as well as the averments in the plaint. Looking to the plaint from this angle, the plaint is devoid of necessary particulars and averments and documents to show that said person was the subject of the defendant No. 1 and that he was appointed under a bilateral trade agreement between India and Holland. The particulars of the said agreement and whether defendant No. I had issued specific orders appointing the said person for the purposes of doing a particular job are not produced along with plaint. In the absence of this relevant material, I am inclined to observe that there is no cause of action against defendant No. 1. This is one more ground to reject the plaint."*

(27) The present case stands on a higher pedestal. Not only have the plaintiffs failed to adduce any evidence regarding payment of rent or deposit of Rs. 25,00,000/- as alleged, but they have not even pleaded that rent was being paid by them to the borrower who is alleged to be their landlord.

(28) The present suit is filed against action purchaser who has purchased the suit property in an auction conducted in the SARFAESI Act. The judgments of the Hon'ble Supreme Court and this Court in relation to nature of pleadings and material with respect to claim for tenancy in suits filed by alleged tenant against the bank will also be applicable to the present suit. In this regard, it will be appropriate to refer to judgment of the Hon'ble Supreme Court in the case of ***Bajrang Shyamsunder Agarwal vs. Central Bank of India and another*** reported in ***(2019) 9 SCC 94***, wherein a claim of tenancy based on photocopies of rent receipt was rejected. Although an order of ex-parte interim injunction was obtained by the tenant from the Small Causes Court. The Hon'ble Supreme Court has held that in the absence of cogent material with respect to existence of tenancy, claim of alleged tenancy should not be accepted. The said judgment is followed by this Court in the case of ***Modinasab Indikar vs. Voard of Directors of Indian Overseas Bank, Chennai and others*** reported in ***2020 (6) Mh.L.J. 244***. The claim of tenancy is based simply on an unregistered agreement which is stated to be executed after a period of around nine months from the date of creation of alleged tenancy. There is no statement in the plaint regarding actual payment of rent although quantum of rent is pleaded. Likewise, there is no material on record to indicate payment of rent as also initial deposit of Rs.25,00,000/-. The alleged landlord who is borrower is the real brother of alleged plaintiffs/alleged tenant. More importantly, in view of aforesaid, it must be held that cause of action pleaded is illusory in nature. The plaint avernment and material based on record by the plaintiffs, taken on their face value do not make out a genuine case of tenancy, when the same are read meaningful. The suit is absolutely vexatious and meritless. It discloses based on legal process.

(29) The plaintiffs had initially filed suit for declaration that they are in occupation of suit properties as tenants of their brother against whom SARFAESI action was taken by the Bank. Having failed in the said suit, the plaintiffs had filed another suit against the auction purchaser for injunction. For the reasons recorded above and having regard to frivolous nature of the suit, costs of Rs.50,000/- are imposed on the plaintiffs. Costs be deposited in following account on or before **15/05/2026** :-

Account Name	:	Public Welfare Account
Account No.	:	129112010001014
Bank Name	:	Union Bank of India,
Branch Name	:	High Court, Civil Lines, Nagpur
IFSC Code	:	UBIN0812978.

(30) In view of the aforesaid, the plaint is liable to be rejected. Civil Revision Application is allowed in following terms:-

i. The order dated 18/11/2025 passed by the learned 19th Joint Civil Judge Senior Division, Amravati on application at Exh.12 in Regular Civil Suit No.395 of 2024 is quashed and set aside.

ii. The Application at Exh.12 in Regular Civil Suit No.395 of 2025 pending on the file of learned 19th Joint Civil Judge Senior Division, Amravati is allowed and plaint in the said civil suit is rejected.

iii. Costs of Rs.50,000/- be deposited on or before **15/05/2026**.

[ROHIT W. JOSHI, J.]

KOLHE

Signed by: Mr. Ravikant Kolhe
Designation: PA To Honourable Judge
Date: 15/04/2026 19:34:49