IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 207 OF 2019

1. Anil Bhausaheb Patil
Age: 62 years, Occ: Business,
R/o 12/14, Kisan Chowk,
Near Market Yard,
Sangli.

2. Ajit Bhausaheb Patil (Since Deceased)
through LRs.
2A. Lata Ajit Patil
Age: 62 years, Occ. Household
Having address at
Tulsi Apartment, Kisan Chowk
Flat No.2, Opp to Market Yard,
Sangli.

2B. Aarati Ravindra Kabadage
Age: 42 years, Occ. Housewife
Having address at
Beside Hotel Sadanand
Miraj Road, Sangli.

2C. Kirti Nilesh Khot,
Age: 40 years, Occ. Housewife
Having address at
Vijaywadi, S.V. Road,
Malad, Mumbai. ..Applicants

Versus

Sangli Urban Cooperative Bank Ltd,
Reg. Under Maharashtra Cooperative Act 1960,
Registered Office, 404, Khanbhag,
Sangli, through Branch Manager
Sangli Urban Coop Bank Ltd,
Sangli Main Branch, Sangli. …Respondent

WITH

CIVIL REVISION APPLICATION NO. 208 OF 2019

Bhausaheb Babgonda Patil
Since deceased through legal heirs
1. Anil Bhausaheb Patil
Age: 62 years, Occ: Business,
R/o 12/14, Kisan Chowk,
Near Market Yard,
Sangli.

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Registered Office, 404, Khanbhag,
Sangli, through Branch Manager
Sangli Urban Coop Bank Ltd,
Sangli Main Branch, Sangli.
…Respondent

Mr. Kuldeep Nikam, with Om Latpate, for the Applicants in both Civil Revision Applications.
Mrs. G.H. Keluskar, for the Respondent in both Civil Revision Applications.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 8th AUGUST 2025
PRONOUNCED ON: 21th AUGUST 2025

JUDGMENT:

1. These Revision Applications are directed against a common judgment and decree dated 7th January 2019 passed by the learned District Judge, Sangli, in RCA Nos. 18 of 2014 in RCS No. 214 of 2006 and RCA No. 242 of 2015 in RCS No. 444 of 1989, whereby the Appeals preferred by the Applicants against the decrees of eviction passed in RCS Nos. 444 of 1989 and 214 of 2006, came to be dismissed by affirming the said decrees passed by the Trial Court.

2. Since the two Suits sought eviction of the tenants from one and the same Suit premises, albeit on distinct statutory grounds, it was considered in the fitness of things to decide both the Applications by a common judgment.

3. Shorn of unnecessary details, the background facts leading to these Revision Applications can be summarised as under:

3.1 The parties are hereinafter referred to in the capacity in which they were arrayed before the Trial Court.

3.2 The Plaintiff is an Urban Cooperative Bank registered under the Maharashtra Cooperative Societies Act 1960 ("the Act of 1960").

3.3 The Plaintiff owns a premises situated at City Survey No. 1103B/4 on Harbhat Road, Sangli. The main branch of the Plaintiff-Bank is located at the said premises. A ground floor premises admeasuring 80.4 sq meters (the suit premises) was in the occupation of Bhausaheb Patil, the deceased-tenant/original Defendant in RCS No. 444 of 1989. Rent was to be paid at the rate of Rs. 350/- per month, apart from the education cess and the electricity charges.

RCS NO. 444 OF 1989:

3.4 The Plaintiff addressed a notice to the original Defendant asserting that the original Defendant was in arrears of rent and electricity charges since the month of July 1988. Despite service of the notice, the original Defendant failed to comply with the demand therein. Asserting that the original Defendant committed default in payment of rent, and that the Suit premises was required for the occupation, and expansion of the business operations, of the Plaintiff the Suit, being RCS No. 444 of 1989, came to be instituted.

3.5 The original Defendant resisted the Suit by filing a Written Statement. All the averments in the Plaint adverse to the interest of the Defendant were denied. The requirement of the Plaintiff was stated to be neither bona fide nor reasonable. It was contended that the Plaintiff had ample space to conduct its banking business. Many departments were shifted from the Main Branch to other locations. The Plaintiff had started construction of a number of premises in Sangli. Therefore, in the event the decree of eviction was passed, the Defendant would suffer greater hardship.

RCS NO. 214 OF 2006:

3.6. During the pendency of the first Suit, the Plaintiff instituted RCS No. 214 of 2006, asserting, *inter alia,* that the Bhausaheb, the original tenant/Defendant passed away on 26th May 1998. The original tenant was running the business of cloths in the Suit premises under the name and style of "Vishal Fabrics". After the demise of the original tenant the Defendant Nos. 1 and 4, the sons and widow of Bhausaheb, sublet the Suit premises to Mr. Shah, who had started an electronics goods and gift articles shop under the name and style of "Anand Shopee" in the Suit premises. Even the said shop Anand Shopee was closed in the month of November 2005. The Defendants were in the process of further subletting the

suit premises or transferring their interest in the suit premises. Hence the suit for eviction.

3.7 The second Suit was also resisted by the Defendants. It was denied that the Defendants had unlawfully sublet the Suit premises to Mr. Shah and were indulging in illegal profiteering.

DECREE IN RCS NO. 214 OF 2006:

3.8 By a judgment and order dated 16th November 2013, RCS No. 214 of 2006 came to be decreed holding *inter alia* that the Defendants had sublet the suit premises.

DECREE IN RCS NO. 444 OF 1989:

3.9 By judgment and order dated 30th July 2015, Suit No. 444 of 1989 was also decreed holding, *inter alia,* that the Defendant committed default in payment of rent and thereby incurred forfeiture of tenancy, the Plaintiff-Bank required the Suit premises for its occupation reasonably and bona fide and in the event the decree of eviction is not passed, the Plaintiff-Bank would suffer greater hardship.

3.10 Being aggrieved, the Applicants preferred Appeals before the District Court. By a common judgment and order, the learned District Judge, Sangli, was persuaded to dismiss both the Appeals and affirm the orders passed by the Trial Court.

3.11 Being further aggrieved, the Applicants have preferred these Revision Applications.

4. By an order dated 4th April 2019, this Court granted an ad-interim relief subject to the Applicants clearing the arrears of rent, and neither creating third party interest in, nor parting with the possession of, the Suit premises.

5. It emerged that the Defendants did not deposit the rent during the pendency of the Appeals till April 2024. An Application was filed before the Trial Court on 14th October 2024, wherein a prayer was made seeking permission to deposit the rent for 120 months, for the period commencing from March 2014 to April 2024.

6. Thus, by an order dated 19th December 2024, this Court clarified that, the grant of any permission by the Trial Court to deposit the arrears and the consequent deposit of the arrears of rent would not amount to waiver of consequences arising from the non-compliance of the order dated 4th April 2019 and the Provisions of Section 12 of the The Bombay Rents, Hotel And Lodging House Rates Control Act, 1947 ("the Bombay Rent Act, 1947").

7. In the backdrop of the aforesaid developments, I have heard Mr. Kuldeep Nikam, the learned Counsel for the Applicants-Defendants in both the Revision Applications, and Mr. G.H Keluskar, the learned

Counsel for the Respondent-Plaintiff at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

SUB-LETTING:

8. To start with, the ground of unlawful subletting of the Suit premises on which the decree of eviction was first passed in RCS No. 214 of 2006. It was the specific case of the Plaintiff that, Mr. Shah was running the electronics goods and the gift articles business under the name and style of "Anand Shopee" in the Suit premises. The Defendant had ceded complete control over the demised premises to the said Mr. Shah. Subsequently, the said Mr. Shah also closed the business in the Suit premises and Rajesh Gidwani (PW-5) started a new business under the name and style of "Get In". It is interesting to note that, Rajesh Gidwani (PW-5) was examined as a witness for the Plaintiff.

9. An endeavour was made on behalf of the Defendants to demonstrate that there was no subletting of the Suit premises as the Defendants had entered into a partnership with Rajesh Gidwani (PW-5). Thus, the tenancy rights in the Suit premises were never surrendered.

10. Mr. Nikam, the learned Counsel for the Applicants, strenuously submitted that, there was overwhelming material to show that the Defendant Nos. 1 to 3 in Suit No. 214 of 2006 had entered into a registered Partnership Agreement with Rajesh Gidwani (PW-5). In the

face of the registered Partnership Agreement, wherein the tenancy rights were retained by the Defendant Nos. 1 to 3, the Courts below committed a manifest error in law in holding that the partnership Agreement was a subterfuge to evade eviction on the ground of unlawful subletting. Mr. Nikam would urge that the Courts below were not at all justified in discarding the registered Partnership Agreement on the premise that, the share in the profits of Defendant Nos. 1 to 3 in the business of the firm was marginal.

11. Mr. Keluskar, the learned Counsel for the Respondent-Plaintiff would, however, submit that the Partnership Agreements were brought about to mask the real nature of the transaction between the parties. It was submitted that the Plaintiff had led positive evidence by examining Rajesh Gidwani (PW-5) to whom the premises was unlawfully sublet. In contrast, the Defendants failed to discharge the onus by explaining the circumstances in which the third parties were in the occupation of the Suit premises.

12. It is well recognized that where a stranger is found in the possession of the demised premises, the onus rests on the tenant and, such stranger, if impleaded as a party, to explain the capacity in which such stranger is in the occupation of the demised premises. True, a tenant may enter into a partnership and retain the control over the demised premises and, in such a situation, the tenancy rights cannot be

said to have been transferred. However, where the Partnership Agreement is a camouflage to conceal the subletting of the demised premises, the Court is not precluded from examining the real nature of the transaction between the tenant and the stranger occupant and, in such a situation, the covenants in the Agreement between the tenant and such stranger do not bind the landlord.

13. It is judicially recognized that to defeat the provisions of the Rent Control legislation, which incorporate subletting as a ground of eviction, often devices are adopted to camouflage the subtenancy and thereby obviate the consequence of unlawful subtenancy. Thus, the Courts are called upon to enquire whether the Agreement of Partnership is a genuine transaction or a subterfuge to evade eviction on the ground of unlawful subletting.

14. In the case of **Parvinder Singh Vs Renu Gautam & Ors**[1] a Three Judge Bench of the Supreme Court enunciated that to defeat the provisions of law, a device is at times adopted by unscrupulous tenants and sub-tenants of bringing into existence a deed of partnership which gives the relationship of tenant and sub-tenant an outward appearance of partnership while in effect what has come into existence is a sub-tenancy or parting with possession camouflaged under the cloak of partnership.

15. The supreme court enunciated the legal position as under:

1 (2004) 4 SCC 794.

"8. … … … If the tenant is actively associated with the partnership business and retains the use and control over the tenancy premises with him, may be along with the partners, the tenant may not be said to have parted with possession. However, if the user and control of the tenancy premises has been parted with and deed of partnership has been drawn up as an indirect method of collecting the consideration for creation of sub-tenancy or for providing a cloak or cover to conceal the transaction not permitted by law, the Court is not estopped from tearing the veil of partnership and finding out the real nature of transaction entered into between the tenant and the alleged sub-tenant.

9. … … … An enquiry into reality of transaction is not excluded merely by availability of writing reciting the transaction. Tyagaraja Mudaliyar Vs Vedathanni (AIR 1936 PC 70) is an authority for the proposition that oral evidence in departure from the terms of a written deed is admissible to show that what is mentioned in the deed was not the real transaction between the parties but it was something different. A lease of immovable property is transfer of a right to enjoy such property. Parting with possession or control over the tenancy premises by tenant in favour of a third person would amount to the tenant having 'transferred his rights under the lease' within the meaning of Section 14(2) (ii) (a) of the Act."

(emphasis supplied)

16. Reverting to the facts of the case, in the light of the aforesaid position in law, the inference regarding the subletting drawn by the Courts cannot be said to be unjustifiable. As noted above, the primary onus to explain the presence of the stranger in the Suit Premises rests on the tenant or the stranger, when he is made a party to the proceeding. In the case at hand, the Plaintiff examined Rajesh Gidwani (PW-5) who was in the occupation of the suit premises, as its witness. Initially, the said witness deposed that there was a partnership between him and the three legal heirs of the deceased-Bhausaheb Patil, the original tenant. He had 64% share in the profits of the business. Defendant Nos. 1 to 3 had 12% each. However, in the cross-examination Rajesh Gidwani (PW-5) conceded in no uncertain terms that when the partnership commenced, under the partnership deed dated 16th July 2007 (Exhibit "155"), he had 97% share in the profits of the said business and Defendant Nos. 1 to 3 had only 1% share each therein. Subsequently in the year 2009, the share of Defendant Nos. 1 to 3 was increased to 12% each. From the evidence of Rajesh Gidwani (PW-5), it further appeared that, the Suit premises was in his possession and he was alone running the business therein.

17. In the backdrop of the aforesaid glaring facts, which stare in the face, the endeavour of Mr. Nikam to urge that notwithstanding the 1% share in the profits of Defendant Nos. 1 to 3 (collectively 3%) the

partnership was a genuine transaction, does not carry conviction. The miniscule share of 1% each, it itself, militates against the partnership Agreement being a genuine transaction. It defies comprehension that for a meagre 3% profit in the partnership business, Defendant Nos. 1 to 3 continued to exercise all pervasive control over the demised premises and the partnership business. From this standpoint, the failure of the Defendants to place on record relevant documents to justify the further increase in the share of the profits to 12% each, after the institution, and during the pendency, of the Suit for eviction, further dents the claim of Defendants that the subsequent increase in the share of the Defendant Nos. 1 to 3 in the profits of the partnership business lends an element of genuineness to the said transaction. Nor any material could be placed on record to show that the profits in the business were transferred to the accounts of the partners.

18. A useful reference in this context can be made to a decision of the learned Single Judge of this Court in the case of **Narhar D Sakhawalkar (Since Deceased through his L.Rs.) Sphurti Nilkanth Sakhawalkar Vs Suresh Lahoti & Ors,**[2] wherein it was *inter alia* observed that the fact that the stranger partners were holding 80% profits out of the partnership business would itself show that, the interest was transferred and subtenancy was created.

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2 2009(2) Mh.L.J. 755.

19. In the case at hand 97% share in the profits of the business to the stranger partner makes the partnership artificial, unrealistic and unappealing to human credulity. Thus, no interference is warranted with the findings recorded by the Courts below on the ground of subletting.

DEFAULT IN PAYMENT OF RENT:

20. On the aspect of default in payment of rent, the Trial Court as well as the Appellate Court have recorded consistent findings that though the Defendant had deposited the arrears of rent and electricity charges along with 9% interest on the day the Defendant appeared before the Court in response to the Suit summons, yet, the Defendant did not regularly deposit the rent during the pendency of the Suit and thereby committed breach of the conditions stipulated in sub-Section (3) of Section 12 of the Bombay Rent Act 1947.

21. In paragraph 19 of the impugned judgment, the learned District Judge has categorically recorded that the Defendants did not regularly pay the rent. The learned District Judge has enumerated the dates on which the rent was deposited by the Defendant; the period for which the rent was so deposited and the resultant delay in the payment of rent.

22. Mr. Nikam, candidly submitted that, indeed, there was some delay in the deposit of the rent during the pendency of the proceedings. However, it cannot be said that the Defendant was not regular in the payment of rent.

23. The aforesaid submission is required to be stated to be repelled. Evidently there was considerable delay in the deposit of rent, in each tranche of the deposit. The tenant may not deposit the rent with mathematical precision. However, a consistent course of default, and deposit of the rent after months together, as a matter of system and repetition, (as shown in paragraph 19 of the impugned judgment) can lead to no other inference than that of failure to regularly deposit the rent during the pendency of the Suit.

24. What exacerbated the situation is the fact that, the Defendants did not deposit the rent during the pendency of the Appeal. As is evident, from the order passed by this Court on 19th December 2024, it was only on 14th October 2024, the Applicants filed an Application seeking permission to deposit the rent for a whopping 120 months i.e., for the period of March 2014 to April 2024.

25. No reasons, or for that matter the persuasive skills of Mr. Nikam, can offer a satisfactory explanation for such inaction and failure to deposit the rent despite a clear and explicit order dated 4th April 2019, that the Applicants would clear the arrears of rent before the next date of hearing, subject to which the ad-interim relief was thereby granted.

26. In this view of the matter, the forfeiture of tenancy for non-compliance with the conditions under Section 12(3) of the Bombay Rent Act 1947 is an inevitable consequence.

REQUIREMENT OF THE PREMISES:

27. With regard to the requirement of the Suit premises for the Plaintiff for its business operations, the thrust of the submission of Mr. Nikam was that, after the institution of the Suit there were significant developments which substantially diminished the requirement of additional premises for the Plaintiff.

28. The requirement of the Plaintiff, according to Mr. Nikam, ceased to exist in two ways. First, there was substantial reduction of the work and the workforce at the main branch of the Plaintiff, as a number of business units were shifted from the main branch to the other branch offices. Second, during the pendency of the Suit, the Plaintiff constructed a new building and also obtained clear and vacant possession of the premises from three other tenants. Therefore, on account of subsequent events, the requirement of the Plaintiff has completely eclipsed.

29. The Courts below took note of the subsequent developments and, yet, found that the requirement of the Plaintiff still subsisted and, in the event of refusal to pass the decree, the Plaintiff would suffer greater hardship.

30. It is trite that the requirement of the landlord has to be judged in the context of the facts as they obtained on the date of the institution of the Suit. That remains the basic rule. However, the Court is required to

take a cautious cognizance of the subsequent events. In cases were the subsequent developments are such that the requirement of the landlord is completely eclipsed, the Court may be justified in modifying the decree.

31. A useful reference in this context can be made to a decision of the Supreme Court in the case of **Gaya Prasad Vs Pradeep Srivastava**,[3] wherein it was enunciated that, the crucial date for deciding as to the the bona fide of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post-petition period is to be taken into account for judging the bona fide of the requirement pleaded by landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. The subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely eclipsed by such subsequent events.

32. Following the abovesaid pronouncement, in the case of **D. Sasi Kumar Vs Soundararajan,**[4] the Supreme Court reiterated that, if as on the date of filing the Petition the requirement subsists and it is proved,

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3 (2001) 2 SCC 604.

4 (2019) 9 SCC 282.

the same would be sufficient irrespective of the time lapse in the judicial process coming to an end, and that the landlord should not be penalised for the slowness of the legal system

33. Applying the aforesaid principles to the facts of the case at hand, it is pertinent to note that the case of the Plaintiff that the main branch of the Plaintiff is located on the first floor of the building, the demised premises on the ground floor and the locker facility provided by the bank is situated in the basement could not be impeached. It emerges from the evidence that the customers of the bank were required to climb 30 odd steps to reach the first floor where the banking operations are conducted. If a customer has to access his locker, he is first required to approach the first floor and then return to the basement to use the locker facility.

34. The necessity of the demised premises, therefore, cannot be said to have been completely eclipsed as the requirement to expand the banking business and extend the facility to the customers cannot be said to have ceased. The submission of Mr. Nikam that the bank has obtained the possession of other tenements and has also constructed buildings to house the new branches of the Bank, even if taken at par, does not detract materially from the Plaintiff's claim. These developments, in a sense, underscore the growing business activities of the Plaintiff-Bank.

35. I am, therefore, inclined to hold that the Courts below have correctly arrived at the findings that the subsequent events did not completely eclipse the requirement of the Bank.

36. On the aspect of the greater hardship, both the Courts have found that the Defendants have another premises in the vicinity of the demised premises. Moreover, if viewed in the backdrop of the fact that the Defendant had ceded complete control of demised premises in favour of the stranger, the Defendants would not suffer any hardship if the decree of eviction is passed. Resultantly, the grounds of reasonable and bona fide requirement and the element of greater hardship are also required to be answered in favour of the Plaintiff.

37. The conspectus of the aforesaid consideration is that, both the Revision Applications deserve to be dismissed.

38. Hence the following order:

: O R D E R :

The Civil Revision Applications stand dismissed with costs.

[N. J. JAMADAR, J.]

39. At this stage, the learned Counsel for the Applicants seeks continuation of the interim relief for a period of 12 weeks. The learned Counsel for the Respondent opposed the prayer.

40. As the interim relief is in operation since 2019, the same shall continue to operate for a period of six weeks from today, subject to the Applicants filing an undertaking not to part with possession of the Suit premises and otherwise create third party interest therein, within one week from today.

[N. J. JAMADAR, J.]