



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

**CIVIL REVISION APPLICATION NO. 285 OF 2007**

Sau. Suman Ramesh Samant  
Age: 63 years, Occupation: Household,  
residing at Awadhut Chintan, Rajaji Path,  
Dombivali (East), Taluka Kalyan, District-Thane ...Applicant

**Versus**

Shri. Arun R. Patil  
Age: 60 years, Occupation: Profession,  
residing at Ramkrishna Niwas, Mukharji  
Road, Dombivli (East), District Thane ...Respondent

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Ms. Preeti Walimbe a/w Ms. Vaishnavi Nagargoje for the Applicant.  
Mr. G. S. Hegde, Senior Advocate a/w Ms. P. M. Bhansali and Mr. Arafat  
Siddique for the Respondent.

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

**RESERVED ON : 9<sup>th</sup> OCTOBER, 2025**

**PRONOUNCED ON : 14<sup>th</sup> JANUARY, 2026**

**JUDGMENT:**

1. The Civil Revision Application is filed under section 115 of the Civil Procedure Code, 1908 ('CPC' for short) by original Plaintiff/landlady against Respondent/original Defendant/tenant, challenging the judgment and decree dated 22/09/2006 passed by 3<sup>rd</sup> Ad-hoc Additional District Judge, Kalyan in Civil Appeal No. 44 of 2003. Under the said impugned judgment and decree, the Appeal filed by Respondent/tenant was allowed, thereby

setting aside the judgment and decree dated 15/02/2003 passed by 3<sup>rd</sup> Joint Civil Judge, Junior Division, Kalyan in RCS/797/1996, thereby dismissing the said suit. The Trial Court had decreed the suit by directing the Respondent to hand over possession of the suit premises. This eviction decree is reversed by the Appeal Court.

2. The Applicant / landlady filed the said suit under provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("the Bombay Rent Act' for short) seeking eviction of the Respondent on the grounds of damages to the suit premises and for not using it with care under section 13(1)(a) of the Bombay Rent Act being contravention of section 108(o) of the Transfer of Property Act, 1882, erection of permanent structure under section 13(1)(b), nuisance under section 13(1)(c), change of user under section 13(1)(k) and reasonable and bonafide requirement under section 13(1)(g) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Bombay Rent Act' for short)

3. The area admeasuring 2546 sq.ft on the first floor of the building known as 'Avadhoot Chintan' situated at Rajaji Path, Dombivali (E) is the suit premises.

4. The Applicant/landlady contended that the Respondent was inducted as tenant of the suit premises on monthly rent of Rs.1,145/-. Initially area of two rooms admeasuring 400 sq.ft. was given to Respondent for residential use and remaining area of 2146 sq.ft. was given to run a hospital. She contended that Respondent has not been using suit premises with due care and has damaged the same. She contended that Respondent has demolished walls of the suit premises and taken out plaster of the walls, fixed tiles creating cracks to the other walls and has fixed water tank as well as air-

conditioning machine by puncturing the slab and walls. She contended that Respondent changed the construction of internal rooms. She contended that these alterations amount to permanent structure carried out without her permission or permission of the local Municipal Corporation. She contended that the water from the water tank flows creating unhygienic atmosphere. She contended that doors and windows are removed and flooring has been demolished. She contended that Respondent is creating nuisance by keeping the hospital premises in unhygienic condition by throwing medical waste such as needles, blood stained cotton and waste. She contended that visitors to the hospital create noise and behave in indecent manner creating nuisance. She contended that the terrace of the building has been illegally broken open and is being used by ward boys and Ayas for objectionable and indecent purposes. She contended that Respondent has illegally converted rooms given for residence into hospital thereby committing illegal change of user. She contended that she bona fide requires the suit premises for her own use and occupation for starting institute of commercial training. She submitted that she does not have financial capacity to purchase new premises, however, Respondent is a medical practitioner and can easily afford other premises. She therefore claimed greater hardship.

5. The Respondent filed written statement resisting the suit. He submitted that by paying huge sum towards construction loan, he has taken suit premises on rental basis and he has been using the same with care and caution. He denied damages to the suit premises. He submitted that when suit premises were taken on rent, there were heavy leakages in the walls and in order to protect further damage, he had fixed tiles. He denied carrying out permanent construction. He contended that he is running a hospital in the name of Sanjivani Surgical and Maternity Hospital in the suit premises

and considering the nature of profession, he has to keep the suit premises clean and tidy. He contended that he was required to fix tiles and air condition for making part of suit premises as ICCU for which he got rooms repaired. He submitted that Applicant was called upon to make necessary repairs but it was not complied. He denied creating nuisance. He denied that visitors to the hospital create noise and also denied use of terrace by ward boys and Ayas as alleged. He contended that Applicant's son had assaulted some of his staff members and therefore he was required to file police complaint. He denied illegal change of user. He contended that Applicant has got possession of a room at ground floor, possession of a gala and three rooms adjoining her own flat on the second floor from various tenants and therefore the requirement is not bona-fide. He contended that Applicant has made unauthorized construction on the back side of the building thereby obstructing free movement of Respondent and his patients.

6. The learned Trial Court framed various issues and decreed the suit on the ground of damage to the suit premises as well as on the ground of permanent structure without permission of the landlady. Rest of the grounds were held in favor of the Respondent/tenant. The Respondent filed Appeal in the District Court and challenged the decree of eviction. The Appellate Court after framing various points for consideration has reversed the findings on the ground of damage to suit premises as well as erection of permanent structure and has confirmed findings on other grounds. Thus the Appeal Court has held all grounds against Applicant thereby dismissing the suit.

7. In these circumstances the Applicant/landlady is before this Court challenging the differing judgments on the ground of damage to the suit

premises as well as erection of permanent structure i.e. 13(1)(a) and 13(1)(b) of the Bombay Rent Act and against concurrent findings about other grounds u/s 13(1)(c), 13(1)(g) and 13(1)(k) of the Bombay Rent Act.

### **RIVAL SUBMISSIONS**

8. Learned Counsel Ms. Walimbe appearing for the Applicant/landlady submitted that the admissions of the Respondent/tenant has been considered perversely by the Appeal Court. She submitted that Clause 5 of the lease document dated 10.02.1980 whereunder changes in suit premises from residential into hospital purpose was permitted, has been perversely appreciated. She submitted that the aspect of local Municipal Corporation sending notice to the Respondent about illegal construction has not been considered by the Appeal Court in proper perspective. She submitted that landlady being the best judge of her requirements still requires the suit premises as she has two sons, one son being married and other being unmarried. She relied upon the judgement of **Somnath Tukaram Kuber versus Meghraj Medeppa Kadali (Writ Petition No. 5547 of 1998 Judgment dated 07.08.2025)** to contend that even without filing cross objections, the Applicant/Landlady could challenge the findings of the Trial Court in Appeal filed by Respondent. She relied upon judgment of Hon'ble Supreme Court in **Anil Joginder Sachdev and Another versus Balasaheb Hiralal Zad and Another [(2024) SCC OnLine Bom 2961]** to support her contention about construction of permanent structure without permission of landlady and permission of the Municipal Corporation.

9. On the other hand, Mr. Hegde, learned Senior Advocate appearing for the Respondent submitted that Clause 5 of the lease agreement clearly permitted the Respondent to make necessary changes in the residential

portion of the suit premises for converting it into hospital and Applicant's No Objection Certificate (NOC) is already given under said clause. He submitted that it has come on record that the condition of the building was such that it was not plastered from outside and it was necessary to put tiles to prevent leakage. He submitted that the alleged permanent construction carried out by Respondent has not diminished the value of the suit premises and therefore, it cannot be taken as a ground for eviction. Inviting the Court's attention to the evidence appreciated by the Appeal Court, it is contended that Appeal Court was justified in rejecting the case of the Applicant on all grounds. He submitted that concurrent findings of fact about change of user, nuisance and bonafide requirements should not be interfered in the limited available jurisdiction u/s. 115 of the CPC. He submitted that the permission of Municipal Corporation was not required for the 'internal changes' made by the Respondent and Section 108 of the Transfer of Property Act is subject to 'contract to contrary' and therefore, the alleged damages to the suit premises has to be considered in the light of permission given by landlady under Clause 5 of the lease agreement. He submitted that none of the alleged permanent structure or construction is destructive or permanently injurious to the building and therefore, no case for eviction on the said ground is made out.

10. Mr. Hegde further submitted that the landlady who has consented for converting residential portion into hospital by making suitable changes is estopped from contending both 'change of user' as well as 'permanent structure'. He submitted that construction carried out by the Respondent is for better enjoyment of the suit premises and even if Municipal Corporation had issued notice, no action was taken thereon and therefore no interference is required in the impugned order. He relied upon the explanation to section

13(1)(b) of the Bombay Rent Act to contend that the expression 'permanent structure' does not include any work with the permission of local authority, if necessary, for providing door, opening of window necessary for ventilation, false ceiling, installation of air-conditioner etc.

### REASONS AND CONCLUSIONS

11. I have considered the rival submissions carefully and perused the record. So far as the ground of bonafide requirement is concerned, both the Courts have concurrently held that The Applicant/landlady had already got one big room on the ground floor from one tenant Mr. Patel, two more tenants - Mr. Vasekar and Mr. Sardarji have vacated tenanted premises, another tenant Mr. Thakur has also vacated three rooms adjoining the flat of Applicant/landlady on second floor and it has come on record that the family of the Applicant is in possession of about 800 to 1000 sq.ft area already on the second floor. It has come on record that Applicant has admitted that one room on the ground floor is lying vacant and even prior to filing suit, possession of two rooms from tenants - Mr. Patel and Mr. Sardarji was obtained. With such evidence on the record, I do not find that the conclusion drawn by both the Courts below requires any interference. It is most probable finding based on material evidence.

12. So far as the ground of change of user is concerned, Clause 5 of the lease agreement itself permits the Respondent/tenant to convert the residential portion of suit premises into hospital by making suitable changes. In that view of the matter, the conclusion drawn by the Courts below that no case of change of user is made out is also most probable one, based on evidence on the record. Therefore, it does not require any interference. Same is the case with the ground of nuisance, in as much as, the Courts

below have concurrently held that the allegations of nuisance and its denial is 'word against word' and there is no cogent evidence to indicate any use of terrace by ward boys and Ayas for indecent purpose. The Applicant has not examined any tenant or independent witness to show that medical waste is being thrown, creating nuisance. In that view of the matter, even the ground of nuisance does not require any interference.

13. Now, coming to the bone of contention between the parties or the apple of discord, as they call it classically, it is in respect of the grounds of permanent structure under section 13(1)(b) and damage to suit premises as contemplated under section 13(1)(a) of the Bombay Rent Act, for committing acts contrary to section 108(o) of the Transfer of Property Act, 1882. These issues are intertwined in the facts of the present case and therefore being considered together.

14. The Appeal Court has considered that there is documentary evidence in the form of letters Exhibit-51 dated 08/10/1981 and Exhibit-64 dated 21/07/1982 from which it is seen that all the tenants including the Respondent had intimated the local Municipal Corporation and Collector of Thane that the suit building was not plastered from outside and therefore the walls of the building were damaged by rain water. It was also informed that there was no roof on the staircase. The law requires the landlady to keep the suit premises in tenable repairs and therefore if the suit building is kept without plaster from outside by the Applicant/landlady, resulting into seepage for which plastering work is done or tiles are put up by the Respondent from inside the suit premises, the same cannot be treated as damage to the suit premises and an act of use without care. Therefore, to this extent, the case of damage is not justified. This also does not amount to

permanent structure. The Appeal Court has rightly considered that the Respondent is a medical practitioner running a hospital keeping indoor patients and therefore, it is highly improbable that Respondent would be negligent to let the water flow continue and create leakages and damage to the suit premises. Considering the evidence on record of this case, internal tiling, fitting of air conditioner, making provision for its exhaust outlet, making changes in door-frame or window frame, making glass partitions are neither damage, nor 'permanent structure', as contemplated under section 13(1)(a) and 13(1)(b).

15. However, it appears from the record that the Respondent has undertaken some large-scale changes in the suit premises by removing walls and making new entry. The Appeal Court has considered correspondence by Applicant/landlady with authorities like local Municipal Corporation and police station about demolition being carried out on the first floor. It is admitted position that the Respondent/tenant was issued notice by the local Municipal Corporation for alleged unauthorized work. Though no action was taken by the Respondent-Municipal Corporation pursuant to such notice, the issuance of notice itself indicates that the Municipal Corporation had taken cognizance of certain alteration work by the Respondent/tenant in suit premises.

16. In this respect, I have perused the Respondent's cross examination. Following admissions of the Respondent/tenant (partly recorded in paragraph 20 of the impugned Judgment) assume importance :

- (i) That he has converted the kitchen and hall of the residential part of suit premises into wards by making three walls.

(ii) That he has removed the partition wall of the kitchen for making 'new entry' from the hospital. That this work has been done without taking permission of either the landlady or the Municipal Corporation.

(iii) That he has not appointed any engineer or architect for such work.

17. The local Municipal Corporation had sent notices Exhibit-47 and 49 calling for an explanation for demolishing the wall of the hall, installing new glass partition by replacing old window.

18. The view taken by the Appeal Court that merely because local Municipal Corporation issued notice will not be sufficient to raise presumption that Defendant has damaged the suit premises or made permanent structure, not be justified, especially in the facts of the present case, where Respondent has admitted removal of internal walls and demolition of partition wall to create new entrance to the suit premises. The admission that the Respondent/tenant did not engage any architect or engineer for the said work, also means that he simply took the affairs in his hands without professional help/advice about legal requirement. This conduct of the Respondent has a bearing on the issue.

19. Demolition of internal walls and creation of a new entrance to suit premises amounts to changing the plan sanctioned by the Municipal Corporation and therefore, requires not only permission from the Applicant/landlady being owner, but also from the Municipal Corporation. The explanation to section 13(1)(b) does not include 'wall' or 'new entry to premises'. Therefore removal of internal walls or partition walls to make

changes or for creating new entrance to the suit premises amounts to both permanent structure and damage to suit premises and an act contrary to section 108(o) of the Transfer of Property Act, 1882 making the Respondent liable to be evicted under section 13(1)(a) and 13(1)(b) of the Bombay Rent Act.

20. As can be seen from paragraph 25 of the impugned Judgment, the Appeal Court was conscious of the fact that removal of wall between kitchen and dining room to enable separate access/entrance to suit premises without permission of the landlady is definitely material alteration. The Appeal Court has perversely connected the said material alteration with aspect of damage to the suit premises. Tiling of walls to prevent leakage is one thing, however, completely removing internal walls and creating new entrance to the suit premises cannot be equated. It cannot be said that for making out ground under section 13(1)(b) for removal of walls and creating new entrance, the element of damage is necessary. The Appeal Court has perversely mixed these two aspects, in effect, diluting the gravity of 'permanent structure' as a statutory ground for eviction. This requires interference.

21. The Appeal Court has considered the lease agreement and has concluded that dominant purpose for the lease is for running hospital and Clause 5 of the lease agreement records no objection by the Applicant/landlady for making changes in the use of residential part into hospital. The said clause is reproduced below in verbatim :

“५. पक्ष नं. २ यांना दिलेले हॉस्पिटल स्वतः वापरावयाचे आहे. पोटभाड्याने अथवा अन्य कोणत्याही हक्काने कोणासही हॉस्पिटल द्यावयाचे नाही. तसेच पक्ष नं. २ यांनी सदरचे हॉस्पिटल गुडव्हिल वगैरे कोणासही विकता येणार नाही. तसेच टेनन्सी हक्क तबदल करून देता येणार नाही. हॉस्पिटलच्या जागेपैकी सध्या राहण्यासाठी उपयोग करीत असलेल्या जागेमध्ये हॉस्पिटल

करीता काही फेरबदल करावयाचे झाल्यास पक्ष नं.१ ची हरकत राहणार नाही. ”

(emphasis supplied)

22. The above clause permits ‘some changes’. Firstly, the words used are “काही फेरबदल” and not “कोणतेही फेरबदल”. Assuming that the dominant purpose was for running hospital and assuming that the said clause permitted some changes, it cannot be treated as ‘a blanket permission’ to make permanent structure/material alterations, without permission of the landlady or Municipal Corporation. If Clause 5 is interpreted in a blanket manner, then it would amount to rendering the provisions of section 13(1)(b) of the Bombay Rent Act nugatory. The Respondent/tenant cannot contract out of the statutory provisions by relying on Clause 5. Inaction on the part of Municipal Corporation, in such cases, cannot be held against the landlady. If the permanent structure/material alteration is looked at from the lens of a blanket permission, then it would amount to rendering a legal provision ineffective, which cannot be countenanced. In that view of the matter, the conclusion by the Appeal Court about permanent structure and damages to the suit premises cannot be sustained. The Appeal Court’s interpretation of Clause 5 is perverse.

23. The aspect of alleged unauthorized construction by Applicant/landlady creating obstruction to tenants is clearly outside the scope of consideration of ground of eviction u/s. 13(1)(a) of the Bombay Rent Act and as such will not have any bearing on the said issue. In any case, no material about such alleged obstruction or any adjudication about it is brought to the notice of this Court.

24. In the aforesaid facts and circumstances, the Civil Revision Application

succeeds partly. The impugned judgment and decreed dated 22/09/2006 is quashed and set aside, only for the ground of damages and permanent structure u/s. 13(1)(a) and 13(1)(b) of the Bombay Rent Act. Accordingly, the decree of the Trial Court dated 15/02/2003 is confirmed only for the ground of damages and permanent structure u/s. 13(1)(a) and 13(1)(b) of the Bombay Rent Act.

25. Accordingly, the Respondent is directed to handover the vacant and peaceful possession of the suit premises to the Applicant/landlady.

26. Rule is made absolute in above terms. No order as to the costs.

27. At this stage, learned Counsel for the Respondent seeks stay to the decree of eviction for a period of 6 weeks. Learned Counsel for the Petitioner opposed the request.

28. Considering the facts and circumstances of the case, subject to the Respondent filing an affidavit of undertaking in this Court, within a period of 2 weeks from today, stating that he will vacate the suit premises within 6 weeks and shall not induct third person therein, time of 6 weeks is granted to vacate the suit-premises. Needless to mention that after 6 weeks, the order of eviction shall become executable.

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