

IN THE COURT OF SMALL CAUSES AT MUMBAI

R.A.E. SUIT NO. 1243 OF 2022

23

1. Mrs. Razia Abbas Hetavkar

Indian Inhabitant, Age- 78 years,

Occ- House wife, residing at

503-A, Yash Residency, F M Hetavkar Marg,

Dockyard road, Mazgaon, Mumbai 400010

ARR = 552-00

CF = 200-00

PF = 2-85

TOTAL = 202-85

2. Mr. Mubin Abbas Hetavkar

Indian Inhabitant, Age- 53 years,

Occ- Business, residing at

802-A, Belle Vista CHS Ltd, Sector 15,

Belapur CBD, Navi Mumbai - 400614

3. Mr. Sajid Abbas Hetavkar

Indian Inhabitant, Age- 50 years,

Occ- Business, residing at

503-A, Yash Residency, F M Hetavkar Marg,

Dockyard road, Mazgaon, Mumbai 400010

...Plaintiffs.

Versus

1. Mr. Abdul Munaf Jooya

Indian Inhabitant, Age- Adult,

Occ- Business address at

Persian Islami Restaurant,

70, Mount Road, Sitafalwadi,

Dr. Mascarenhas Road,

Physical verification carried out with English / Marathi Data Entries in CIS and the same are found correct.

LODGED ON : 02/11/2022
REGISTERED ON : 04/11/2022
Supdt. Process Department

J.C. Supdt. (Process Dept.)

Order

Issue summons to Deft/Defts

Registrar

30 / 11/2022

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↓
Opp. Khoja Kabrastan,
Mumbai – 400 010.

2. Mr. Masood Mozayan
Indian Inhabitant, Age- Adult,
Occ- Business address at
Persian Islami Restaurant,
70, Mount Road, Sitafalwadi,
Dr. Mascarenhas Road,
Opp. Khoja Kabrastan,
Mumbai – 400 010.

.....Defendants

Sec 16(1)(a), (g) of MRC Act
Section 33 MRC Act

THE PLAINTIFFS ABOVE NAMED STATE AS UNDER:-

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MRC Act

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1. The Plaintiffs submit that they are the owners of land bearing Collectors old no.97, New no.16331, Old survey no.688 New survey no.3657 (part) and Cadastal survey no.544, 546, 1/546, 1B/546 and 10/546 situated at Sitafalwadi, Dr. Mascarenhas Road, Opp. Khoja Kabrastan, Mazgoan, Mumbai – 400 010. The Plaintiffs submit that on the said land there are various residential and commercial properties i.e. shops owned by them. The Plaintiffs are annexing the copy of Deed of Assignment dated 16.11.1991 showing their ownership at Exhibit "A" hereto. The Plaintiffs are annexing the copy of property card at Exhibit "B" hereto.

2. The Plaintiffs submit that shop no.1 and 2 admeasuring 450 sq. feet approx. being Persian Islami Restaurant situated

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land bearing Collectors old no.97, New no.16331, Old survey no.688 New survey no.3657 (part) and Cadastal survey no.544, 546, 1/546, 1B/546 and 10/546 situated at Sitafalwadi, Dr. Mascarenhas Road, Opp. Khoja Kabrastan, Mazgoan, Mumbai – 400 010 is the “suit premises” and herein after referred to as

Plaintiffs are owners and landlords, Defendant no.1 is the original tenant and Defendant no.2 is illegal occupier.

3. The Plaintiffs submit that shop no.1 and 2 is owned by them. The Plaintiffs submit that Defendant no.1 Mr. Abdul Munaf Joya was conducting business from shop no.1 and 2. The Plaintiffs submit that said Defendant no.1 Mr. Abdul Munaf Joya was conducting business from the shop no.1 and 2 in the name and style of ‘Persian Islami Restaurant’. The Plaintiffs submit that all these years Defendant no.1 Mr. Abdul Munaf Joya was conducting the hotel business from the suit premises being shop no.1 and 2.

4. The Plaintiffs submit that vide Development Agreement dated 1.1.2012 registered on 5.3.2012 they alongwith other co-owners had given the land bearing Collectors old no.97, New no.16331, Old survey no.688 New survey no.3657 (part) and Cadastal survey no.544, 546, 1/546, 1B/546 and 10/546 situated at Sitafalwadi, Dr. Mascarenhas Road, Opp. Khoja Kabrastan, Mazgoan, Mumbai – 400 010 for redevelopment to M/s. Neminath Realty. The Plaintiffs crave leave to refer to and rely upon the copy of Development Agreement dated 1.1.2012 registered on 5.3.2012 when produced.

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5. The Plaintiffs submit that as they had given development rights to M/s. Neminath Realty, the Plaintiffs were assured by M/s. Neminath Realty, that M/s. Neminath Realty would take all possible care to protect the properties. The Plaintiffs submit that all these years there were under the bonafide impression that Mr. Abdul Munaf Joya was conducting the hotel business from the suit premises being shop no.1 and 2.

6. The Plaintiffs submit that during the pandemic, in December, 2020, one Mr. Masood Mozayan the Defendant no.2 herein called the Plaintiff no.2 Mr. Mubain Abbas Hetavkar and told Plaintiff no.2 that he wanted to speak with the Plaintiffs. The Defendant no.2 told the Plaintiffs that he is running the 'Persian Islami Restaurant' from the suit premises that is Shop no.1 and 2. The Plaintiffs submit that were shocked to learn that Defendant no.2 is occupying the suit premises being shop no.1 and 2. The Plaintiffs submit that Defendant no.2 is a trespasser and is illegally occupying the suit premises being shop no.1 and 2.

7. The Plaintiffs submit that the abovesaid meeting took place in Sarvi Restaurant, Nagpada, Mumbai. In the said meeting Defendant no.2 told the Plaintiff no.2 that builder, Mr. Munaf Vadgama, partner of M/s. Neminath Realty had filed a police complaint against Defendant no.2 for trespassing and illegal occupation. The Plaintiff no.2 expressed his inability to help Defendant no.2, since Defendant no.2 had indeed trespassed and the builder M/s. Neminath Realty had rightfully

made the police complaint against Defendant. The Plaintiff no.2 in the said meeting also told the Defendant no.2 to vacate the suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant as Defendant no.2 had illegally trespassed and unauthorisedly occupying the suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant.

8. The Plaintiffs submit that inspite of the Development Agreement dated 1.1.2012 registered on 5.3.2012, M/s. Neminath Realty failed and neglected to carry out any redevelopment. The Plaintiffs submit that on 15.7.2022 they had terminated the Development Agreement dated 1.1.2012 registered on 5.3.2012. The other co-owners, being Aamir Khatkhatay and Imran Khatkhatay, had already terminated the said development agreement vide letter dated 29.6.2022.

9. The Plaintiffs submit that after terminating the Development Agreement dated 1.1.2012 registered on 5.3.2012 with M/s. Neminath Realty, the full rights of the Plaintiffs over the land and structures standing thereon were restored back to them. The Plaintiffs once again started looking after the land old survey no.688 New survey no.3657 (part) and Cadastal survey no.544, 546, 1/546, 1B/546 and 10/546 situated at Sitafalwadi, Dr. Mascarenhas Road, Opp. Khoja Kabrastan, Mazgoan, Mumbai – 400 010. The Plaintiffs in August, 2022 checked the status of the suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant. The Plaintiffs submit that

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Defendant no.2 continued to unauthorisedly occupy the suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant.

10. The Plaintiffs submit that on 27.8.2022, to ascertain the situation , ~~and~~ Plaintiff no.2 and Mr. Aamir Khatkhatay met Defendant no.2 in the Sarvi restaurant alongwith partner of Defendant no.2 Mohammed Reza Shirazi. In the said meeting, Defendant no.2 flatly refused to vacate suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant inspite of illegally trespassing and unauthorisedly occupying the same.

11. The Plaintiffs submit that they vide Advocate's notice dated 19.9.2022 addressed to the Defendant no.2 placed on record that Defendant no.2 has illegally trespassed and is unauthorizedly occupying the suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant. The notice called upon the Defendant no.2 to vacate the suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant. The said Advocate's notice dated 19.9.2022 was received by the Defendant no.2 vide his acknowledgment dated 23.9.2022. The Plaintiffs are annexing the copy of Advocate's notice dated 19.9.2022 and copy of postal acknowledgement dated 23.9.2022 at Exhibit "C" hereto.

12. The Plaintiffs submit that inspite of the Advocate's notice dated 19.9.2022, the Defendant no.2 has refused to vacate the suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant. The Plaintiffs then have filed police

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complaint against the Defendant no.2 for illegally trespassing and unauthorizedly occupying the suit premises being shop no.1 and 2 i.e. Persian Islami Restaurant. The Plaintiffs crave leave to refer to and rely upon the copy of police complaint when produced.

13. The Plaintiffs submit that Defendant no.1 has unlawfully sublet the suit premises to Defendant no.2 without the permission of the Plaintiffs. The Plaintiffs submit that Defendant no.2 failed to hand over possession of the suit premises to the Plaintiffs. The Plaintiffs submit that the Defendant no.2 is occupying the suit premises unauthorizedly since August, 2022. The Plaintiffs submit that the Defendant no.2 is continuing to carry out business of restaurant in the suit premises unauthorizedly. However, Defendant no.2 for the reasons best known to him refused to hand over the possession of the suit premises.

14. The Plaintiffs submit that the Defendant no.2 has without the consent of the Plaintiffs erected permanent structure in the suit premises. The Plaintiffs submit that no permission was ever sought from the Plaintiffs by the Defendants while making permanent structural changes in the suit premises.

15. The Plaintiffs submit that suit premises reasonably and bonafide required for occupation by Plaintiffs for carrying on business. The Plaintiff no.2 is a construction engineer and he requires the suit premises for carrying on his business. The

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Plaintiff no.2 has no other premises for carrying on the said construction business. The Plaintiffs submit that the Defendant no.2 is having his own premises, wherein Defendant no.2 is conducting similar business of restaurant in the name and style of 'Sarvi Restaurant', situated at Nagpada, Mumbai. The Plaintiffs are thus in need of the said suit premises for reasonably and bonafide for occupation by Plaintiffs.

16. The Plaintiffs submit that occupancy of the Defendants of the suit premises since August, 2022 is bad-in-law and illegal. The Plaintiffs submit that inspite of receiving Advocate's notice dated 19.9.2022 the Defendant no.2 has refused to vacate the suit premises. The Plaintiffs therefore seeks to eject the Defendants from the suit premises.

17. The Plaintiffs submit that the Defendants are occupying the suit premises illegally since August, 2022 and earning profit from the said business, it is also just, necessary and in the interest of justice that any fit person be appointed as Court Receiver in respect of suit premises under Order 40 Rule 1 of Civil Procedure Code till the disposal of the suit.

18. The Plaintiffs submit that they apprehend that the Defendants are likely to part with possession and create further third party rights which would lead to multiplicity of proceedings. In the circumstances, the Plaintiffs pray to this Hon'ble Court that the Defendants, their servants, agents, person and/or persons claiming through them be restrained by

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an order of injunction of this Hon'ble Court from parting with possession of the suit premises and/or creating third party rights of any nature in respect of suit premises and the business till disposal of the suit.

19. That for purpose of court fees, the annual rack rent is assessed at Rs.552/- (i.e. Rs.46 p.m. X 12 months). The court fees is paid as per section 6 (xii) (d) of the Bombay Court Fees Act, 1959.

20. The Plaintiffs submit that suit premises are situated at Mazgoan, Mumbai which is within territorial jurisdiction of this Hon'ble Court. The entire cause of action has arise in Mumbai and as such this Hon'ble City Civil Court, Mumbai has territorial jurisdiction to entertain, try and decide the present suit.

21. The Plaintiff submits that the cause of action for filing this suit has arisen in August, 2022 when the Defendants refused to vacate the suit premises. Therefore, suit of Plaintiff is filed within the period of Limitation.

22. The Plaintiffs submit that they have not filed any suit against the Defendant in respect of the present cause of action either in this Hon'ble Court or in any other Court of law.

23. There is no bar to file the present suit. The suit is not barred by Law of Limitation.

24. The Plaintiffs submit that no caveat is filed or served upon the Plaintiffs by the Defendant or by any third party till the date of filing of the present suit.

25. The Plaintiffs submit that they will rely upon the documents a list is annexed hereto.

26. That suit premises are not covered by the Vacant Land act, 1984 and Slum Area Act.

27. The Plaintiffs therefore pray that:

(a) to order and direct the Defendants, their servants, agents and any other persons claiming through them to vacate and hand over peaceful possession of the suit premises with business being shop no.1 and 2 'Persian Islami Restaurant' situated at Sitafalwadi, Dr. Mascarenhas Road, Opp. Khoja Kabrastan, Mazgoan, Mumbai - 400 010.

(b) An inquiry for mesne profits from 1st December, 2020 as provided by the Code of Civil procedure, 1908.

(c) to order and direct the Defendants, their servants, agents and any other persons claiming through them by an order of injunction of this Hon'ble Court from creating any third-party interest and/or parting with possession of the suit premises with business being shop no.1 and 2 'Persian Islami Restaurant' situated at Sitafalwadi, Dr. Mascarenhas Road, Opp. Khoja Kabrastan, Mazgoan, Mumbai - 400 010.

(d) to appoint any person or such other fit and proper person as Court Receiver under Order 40 Rule 1 of the Code of Civil Procedure of the suit premises with business being shop no.1 and 2 'Persian Islami Restaurant' situated at Sitafalwadi, Dr. Mascarenhas Road, Opp. Khoja Kabrastan, Mazgoan, Mumbai - 400 010.

(e) ad-interim reliefs in terms of prayer clause (b), (c) and (d) hereinabove be granted.

(f) for costs of the suit be provided for.

(g) for such other and further reliefs as this Hon'ble Court may deems fit and proper on the facts and circumstances of the case.

Admit to File & Register

Mumbai.

Dated: 2/11/22

P. S. Anand

Advocate for the Plaintiffs.

Addl. Registrar

19 NOV 2022

P. A. Tarkar
Plaintiff no.1

A. Tarkar
Plaintiff no.2

S. Tarkar
Plaintiff no.3



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:VERIFICATION:

I, Mubin Hetavkar, the Plaintiff no.2 abovenamed, do hereby solemnly declare that contents of paras 1 to 16 are true to my own knowledge and contents of paras 17 to 27 are stated on information and legal submission which I believe the same to be true.

Solemnly declared at Mumbai
this 2 day of November, 2022

Mhetavkar

Before me

P. S. Amthare

Advocate for Plaintiffs.

Presented on
16/11/22

Solemnly affirmed before me Age - 53
Mubin Hetavkar
Who is identified before me by
A.H. 5169 9551 6825
whom I personally know
This 2 day of 11 2022
J. B. Hogle
(J. B. Hogle Supdt.)
Small Causes Court
Mumbai 400 002

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Plaintiff no 2
present for himself
and Plaintiff no 1. He
has filed of record copy
of power of attorney
dated 29.1.2023.
Plaintiff no 3 present
for
Plaintiffs present
Defendant no 1 present
through his C.A. Mr. Mohammad
Husein Muzzaian. He has filed
on record copy of power
of attorney dated 10.12.2023.
He has also filed his
Adhar card on record.
Defendant no 2 is
present. Both parties
have and Id. advocate
for plaintiffs have
admitted contents of
these consent terms &
their signatures thereon.
They submitted that the
dispute has been settled
between parties out of
court. The consent terms
so verified Rfr.

IN THE COURT OF SMALL CAUSES AT MUMBAI

R.A.E. SUIT NO.1243 OF 2022

1. Mrs. Razia Abbas Hetavkar and others ...Plaintiffs.
Versus
1. Mr. Abdul Munaf Jooya and anotherDefendants

CONSENT TERMS

Both parties have mutually agreed to settle their disputes on the following terms and conditions.

1. The Defendants have agreed to pay a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs only) as compensation to the Plaintiffs in respect of the suit premises.
 - (a) A sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) to the Plaintiff no.1 by Cheque No. 993863 dated 21.1.2023 drawn on State Bank of India Bank Ltd., Nepean Sea road branch.
 - (b) A sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) to the Plaintiff no.2 by Cheque No. 993864 dated 21.1.2023 drawn on State Bank of India Bank Ltd., Nepean Sea road branch.
 - (c) A sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) to the Plaintiff no.3 by Cheque No. 993865 dated 21.1.2023 drawn on State Bank of India Bank Ltd., Nepean Sea road branch.
2. The Defendants agree and undertake to pay Rent from date of signing consent terms being Rs.6000/- per month with permitted increases to be paid to Plaintiff no.3 Mubin Hetavkar

06.02.2023
Judge

before the 5th of each month or as instructed by Plaintiffs in the future.

3. The Defendants agree and undertake to pay arrears of rent with permitted increases from 01-01-2011 till the date of signing of the above consent terms to Plaintiff no.3 Mubin Hetavkar.

4. The Defendants agree that Goods and Service Tax (GST) when and if applicable shall be intimated to the Defendants and the applicable amount of GST shall be added to the rent due and payable by the Defendants.

5. The Defendants are aware that the Government Lease has expired and that the Plaintiffs are raising money to fulfill the obligation. The Defendants will make provision for payment of their share of the Government Lease, and will within 15 days of notice shall deposit their share which amounts to 1% of the total amount lease payable by the Plaintiffs and other co-owners on cadastral survey nos. 544, 546, 1/546, 1B/546 and 10/546 of Mazagon Division. This amount shall be deposited by the Defendants with the Plaintiffs and failure to do so will automatically terminate the tenancy.

6. The Plaintiffs and Defendants do and each of them hereby declare and confirm that all of them have signed these Consent Terms out of their own will and accord and without any misrepresentations, coercion or pressure from any other person/s

and after having taken the independent legal opinion of their legal consultants, and therefore, the same are binding upon each of them and their respective heirs, executors and administrators forever or a Developer with whom the Plaintiffs/owners enter into an agreement.

7. It is hereby mutually agreed between the Plaintiffs and Defendants that in case any of the aforesaid cheques issued by the Defendants mentioned in clause no.1 (a) to 1(c) above is dishonoured for any reason whatsoever, the consent terms shall stand cancelled and revoked and the above R.A.E. Suit no.1243 of 2022 will be revived and restored to the stage from where the consent terms were executed and would proceed on merits.

8. The Defendants agree and undertake that they will not transfer or assign tenancy and will not create sub-tenancy. The Defendants agree and undertake that they will not make permanent additions and alterations in the suit premises without the express and/or written permission of the Plaintiffs.

9. The Defendants agree to give consent to any builder/developer with whom the Plaintiffs and other co-owners have a fresh redevelopment agreement, provided the builder/developer agrees to give MHADA approved area to the Defendants alongwith reasonable transit rent.

10. The Plaintiffs agree to indemnify the Defendants as regards to any claim or demand raised in respect of the shop no.1

DeFampane
Advocate for Plaintiffs

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IN THE COURT OF SMALL
CAUSES MUMBAI
R.A.E. SUIT NO. 1243 OF 2022

1. Mrs. Razia Abbas
Hetavkar and others ...Plaintiffs.

Versus

1. Mr. Abdul Munaf Jooya
and anotherDefendants

CONSENT TERMS

Dated this 4th day of February, 2023

AMEYA TAMHANE
Advocate for Plaintiffs
H3/304, Golden Arcade
Pratiksha Nagar,
Sion, Mumbai -22

IN THE COURT OF SMALL CAUSES AT MUMBAI
R.A.E. SUIT NO. 1243 OF 2022
CNR No. MHSCA20023302022

Coram: Revati M. Kante, Judge
Court Room No. 23.
Date of Presentation: 02.11.2022
Date of Registration: 19.11.2022
Date of Decision: 04.02.2023

Claim: Rs. 552/-

CONSENT DECREE

This suit had filed by the plaintiff against defendants.

This suit came on board on 04th February, 2023 for hearing before Honourable Judge, Revati M. Kante, presiding in Court Room No. 23 in the presence of Shri. Ameya Tamhane, Ld. Adv for Plaintiffs.

It is ordered that:

ORDER

1. Plaintiff No.2 present for himself and Plaintiff No.1. He has filed on record, copy of power of attorney dated 29.01.2023. Plaintiff No.3 present. Ld. Advocate for the plaintiffs present. Defendant No.1 present through his C.A. Mr. Mohammed Husein Mozayan. He has filed on record copy of power of attorney dated 10.12.1974. He has also filed his Adhar Card on record. Defendant No.2 is present. They have filed Consent Terms on record at Exhibit-9. Both parties and Ld. Advocate for plaintiffs have admitted contents of those Consent Terms and their signatures thereon. They submitted that the dispute has been settled between the parties out of Court. Accordingly, the suit is disposed of as compromised. No order as to costs. Consent Decree be drawn up accordingly.

Sd/-

Revati M. Kante,
Judge, C.R.No. 23

Copy of Consent Terms (Exhibit – 9) is attached herewith.

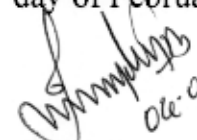
R.A.E. SUIT NO. 1243 OF 2022
CNR No. MHSCA20023302022

(Claim – Rs.552/-)

BILL OF COST

		Plaintiff	Defendant
1	Stamp on Plaint	200.00	
2	Stamp on V.P	10.00	00.00
3	Stamp on Application/Exhs.	10.00	00.00
4	Pleader's Fee	300.00	00.00
5	Commissioner's Fee		
6	Subsistence of Witness		
7	Service of Process	3.80	
	Total	523.80	00.00

Given under my hand and Seal of the Court
This 04th day of February, 2023


(Revati M. Kante)
Judge, C.R.No.23.

Prepared by : Shri. D. L. Wage - Clerk Typist

Compared By : Judicial Clerk Dhruv
8/2/23

Sign of Plaintiffs Adv : Shri. Ameya Tamhane