

**MHGA070003052024**



**IN THE COURT OF CIVIL JUDGE JUNIOR DIVISION, AHERI, DISTRICT-**  
**GADCHIROLI**

(Presided over by Shahid Sajiduzzaman M.H.)

**Regular Civil Suit No.05/2024**

**PLAINTIFF:** - Yogendra Vinod Bhosale  
Age about 46 Years, Occu.:– Business,  
R/o Prabhag No.8, Aheri, Tah. Aheri,  
Dist. Gadchiroli.

**- V E R S U S -**

**DEFENDANT** : - Rakesh Reddy Potwar,  
R/o. C/o Madhukar Nagulwar,  
in front of Sarswati Shishu Mandir,  
Police Station road, Aheri, Tah. Aheri,  
District Gadchiroli.

**Appearance :**

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Learned advocate Shri. S.U. Kumbhare for the plaintiff.  
Learned advocate Shri. U.S. Galbale for the defendant.  
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**ORDER BELOW EXH.05**

(Passed on 19/08/2024)

This is the application under Order 39 Rule (1)(2) of Code of Civil Procedure.

2. By way of present application, the plaintiff is seeking direction against the defendant to supply electricity as well as to remove the barriers and allow the plaintiff to use road from the side of the defendant to his shop. It is the case of the plaintiff that he is in

possession of rented premises which is bounded as under:

Towards East : Shop of Mukkawar  
Towards West : Shop of Bhandarkar  
Towards North : Open space and rice mill  
Towards South : Alappali Ahri road

(hereafter referred as the tenanted premises.)

3. According to the plaintiff he had taken two blocks on ground floor on monthly rent of Rs. 1500/- per month and also one shop at 1<sup>st</sup> floor for a monthly rent of Rs.800/- thereafter, the plaintiff has taken one shop on rent from the defendant. In all the plaintiff has taken four blocks on rent from the defendant. For ground floor shops, the plaintiff is paying Rs.4,000/- each whereas, for 1<sup>st</sup> floor's shop, the plaintiff is paying Rs.3000/- and Rs.3,500/- respectively on 14.02.2024 without prior intimation. The defendant has disconnected the electricity supply of the plaintiff. The defendant has disconnected electricity supply and has blocked the road of shop situated at 1 st floor and ground floor. Hence, the plaintiff is praying for directing the defendant to supply the electricity as well as to remove the barriers in order to use the shop.

4. The defendant filed written statement at Exh.17 and opposed the application. The defendant denied the averments of Plaintiff in toto. By way of special pleading it is submitted that the defendant is owner and possessor of land survey no.540, area 764.12 Sq.Mtr. and property no.3847, 2966 and 3247 of Mouza Aheri. It is submitted that above mentioned properties having shutters. It is submitted that the plaintiff and the defendant had entered into temporary lease agreement for a period of eleven months for two rooms on the ground floor and for two rooms on first floor vide agreement dated 12.05.2015 and from the date of agreement Rs.6,400/- per each room at ground floor which comes to 12,800/- and Rs.1,500/- per each room at 1<sup>st</sup> floor which comes to

Rs.3,000/-. According to the defendant agreement had been valid from 01.05.2015 to 01.04.2016 but the plaintiff continued the tenancy even after termination of period of agreement. It is submitted that the determined terms and conditions are well known to the plaintiff. But the plaintiff failed to follow determined terms and conditions. Therefore, the plaintiff bound to vacate tenanted premises owned by the defendant. It is submitted that the defendant many times approached to the plaintiff and expressed that he wants to renovate tenanted premises for development, but said request overlooked by the plaintiff. Therefore, on 31.03.2023 the defendant issued legal notice to the plaintiff for vacating the premises. But surprisingly the plaintiff replied to counsel and overlooked the notice. The defendant required tenanted premises for renovation. The plaintiff fails to fulfill the determined terms and for his own wrong filed the present suit for infringement of right of the defendant. Hence, there is no merit in the application. The same be rejected with costs.

5. Heard Learned advocate Shri. Kumbhare for the plaintiff and Shri. Galbale for the defendant.

6. Following points arose for my determination and I have recorded my findings against each of them for the reasons mentioned below.

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1)	Whether the plaintiffs have made out a prima-facie case?	<b>Yes</b>
2)	Whether the plaintiffs have balance of convenience in their favour ?	<b>Yes</b>
3)	Whether the irreparable loss would cause to the plaintiffs ?	<b>Yes</b>
4)	What order?	<b>As per final order.</b>

### REASONS

7. It is pertinent to note here that the present suit is filed by the plaintiff in the capacity of tenant. The plaintiff is praying for removal of barriers/ obstruction at hands of the defendant. It is imperative to note here that during the course of hearing of present application, learned advocate for the defendant submits that this Court being Court of Civil Judge Junior Division has no jurisdiction to try and entertain the suit and jurisdiction lies with Court of Civil Judge Senior Division. In order to buttress his submission learned advocate for the defendants relied upon case of *Subhash Chander and ors. Vs. M/s. Bharat Petroleum and ors*<sup>1</sup>. It is submitted that jurisdiction of Civil Court are excluded from landlord tenant disputes when they are covered by the provisions of State Rent Acts, which are given an overriding effect to the other laws.

8. It is imperative to note here that the present suit is filed by the plaintiff in the capacity of tenant. Moreover, the defendant has admitted that there had been tenant and landlord relations between the plaintiff and the defendant. It is pertinent to note here that admittedly suit is filed under the provisions of Maharashtra Rent Control Act. The object of the Act is to safeguard the interest of the tenants. Section 33 of the Maharashtra Rent Control Act deals with the jurisdiction and Section 33C speaks about jurisdiction. It is pertinent to note here that if there is Small Causes Court then, jurisdiction lies with Small Causes Court. In the absence of Small Causes Court, jurisdiction lies with Court of Civil Judge Senior Division. In the absence of Small Causes Court and Court of Civil Judge Senior Division, jurisdiction lies with Court of Civil Judge, Junior Division. In such situation there is no force in argument advanced by advocate for the defendant. Moreover, the facts of case *Subhash Chander and ors (Supra)*<sup>2</sup> is totally different from the facts of this case and

1 2022 LiveLaw (SC) 101

2 2022 LiveLaw (SC) 101

therefore, same is not applicable to present suit.

9. It is imperative to note here that admittedly there is admission of tenant landlord relation by the defendant. However, there is no reply to averments of the plaintiff that the defendant has not closed the way or has created obstruction or barriers. It is imperative to note here that the tenant cannot be evicted unless by following due process of law. Moreover, the defendant being landlord cannot obstruct to the peaceful possession of the tenant at tenanted premises. From the documents on the record and photographs filed by the plaintiffs prima-facie shows that way of the plaintiff for ingress and outgress is closed by the defendant unless said barriers are removed the plaintiff cannot enjoy the peaceful possession at tenanted premises peacefully. Moreover, if the barriers are not removed then it will cause irreparable loss to the plaintiff that itself shows that balance of convenience lies in the favour of the plaintiff. Therefore, it is necessary to direct the defendant to remove the barriers.

10. The plaintiff is also praying for directing the defendant to supply electricity. However, this Court has already directed the plaintiff to apply for electricity connection as there is no document to show that earlier electricity was provided by the defendant or the tenancy amount includes electricity charges. Therefore, this Court cannot direct the defendant to supply electricity to the plaintiff. However, plaintiff can very well apply for new electricity connection from MSEDCL by giving appropriate application. In view of the above facts and circumstances, application deserves to be partly allowed to the extent of removal of barrier. Therefore, I answer the Point no.1 to 3 partly in the affirmative only in respect barriers / obstruction for ingress and outgress of the plaintiff for enjoyment of tenancy premises. Hence, I proceed to pass the following order.

**ORDER**

- 01) The application is partly allowed.
- 02) The defendant is directed to remove the barriers and to allow the plaintiff to use the road from the side of defendant to his shop.
- 03) The defendant is directed to remove all the barriers which hurdles the plaintiff for ingress and outgress during the pendency of the present suit.
- 04) The plaintiff is at liberty to approach the MSEDCL for supply of new connection on payment of necessary charges.
- 05) Costs in cause.

Date : 19/08/2024  
Place : Aheri.

**(Shahid Sajiduzzaman M.H.)**  
Civil Judge Junior Division,  
Aheri, Distt. Gadchiroli.

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R.C.S. No.05 of 2024.  
Yogendra Vs. Rakesh  
Order below Exh.05)

**CERTIFICATE**

I affirm that the contents of this PDF file order are same word to word as per the original Judgment or Order.

Name of the stenographer

:- J.A. Gadekar, Grade -III.

Name of the Court

:- C.J.J.D. & J.M.F.C. Aheri.