

MHND010012032025



IN THE COURT OF DISTRICT JUDGE-2, NANDED
(Presided over by Dr. S. D. Tawshikar)

Regular Civil Appeal No. 52/2025

Sudhakar S/o. Apparao Hurne, Died
through L.Rs.

1/1- Sushma W/o. Sudhakar Hurne,
Age 70 yrs., Occu; Household.

1/2- Rohit S/o. Sudhakar Hurne, Age
44 yrs., Occu: Business,

1/3- Vrashant S/o. Sudhakar Hurne,
Age 42 yrs., Occu: Business, All R/o.
Cloth Shop, Gurugovindsingh Road,
Nanded. Tq. Nanded.

..Appellant/Ori. Defendant

Versus

Bhagwanprasad Jagannath Sharma, Age 73
yrs., Occu: Private, R/o. Gurugobindsingh
Road, Old Mondha Nanded.

...Respondent/Ori. Plaintiff

Claim: Appeal Under Section 96 of the Code of Civil
Procedure, 1908.

Appearance:

Ld. Adv. Mr. Y. S. Ardhapurkar for the appellants.

Ld. Adv. Mr. J. G. Kurtadikar, for respondent.

ORDER BELOW EXH. 05

(Pronounced and delivered on 16th January, 2026)

Appellant has preferred instant application seeking stay to the execution and operation of judgment and decree dated 26-03-2025 passed by learned Civil Judge (Sr. Dn.) Nanded in RCS No.675/2013.

2. Perused application and the record produced in the appeal. Heard both sides.

3. For better understanding parties are referred as per their nomenclature before the learned Trial Court.

4. Appellant/original plaintiff had filed suit bearing RCS No.675/2013 seeking perpetual injunction against the defendant from creating third party interest and for recovery of possession of suit premises under section 16 of the Maharashtra Rent Control Act. Appellant/defendant contested suit by filing written statement Exh.28. After considering the evidence adduced by either side, the learned Civil Judge (Sr. Dn.), Nanded vide impugned judgment and decree dated 26-03-2025 pleased to partly decreed the suit and thereby directed defendants to deliver vacant possession of the suit shops to the plaintiff within a period of three months from the date of judgment. Hence the present appeal.

The brief background of the dispute between the parties is a under-

5. Plaintiff claims to be owner of subject suit shops, which are more particularly described in the para No.1 of the plaint. It is contended that the father of the plaintiff namely Jagannath Sharma

was the owner of the said CTS No.1859 wherein subject shops are situated. Plaintiff claims that Government of Maharashtra had issued a Sanad in favour of Jagannath Sharma, which confirms his. Jagannath Sharma died on 13th November, 1989 and thereafter, there was family partition and so far as suit shops are concerned, they Came to be allotted to the present plaintiff.

6. Plaintiff claims that suit shops were rented out to one Laxman Apparan Hurne, the grand-father of defendant. Laxman died in the year 1991. Thereafter, his son namely, Ashok Hurne continued the cloth business in the suit shops. He too died somewhere in year 1993-94. Thereafter, wife of Ashok Hurne namely, Arunabai was in possession of the suit shops for some time. However, after sometime defendant namely Sudhakar illegally occupied the suit shop and continued cloth business. Plaintiff claims that there is no tenancy agreement between him and the defendant. As such the defendant is having unauthorized and illegal possession over the suit shops. In alternate, plaintiff claims that he needs suit shop for bonafide requirement and thereby seeks eviction of defendants under section 16 of the Maharashtra Rent Control Act.

7. Defendant claims that the suit shops are in fact the property of 'Shri Hanuman Tekadi Trust' and the plaintiff has no nexus with it. Defendant objected the maintainability of the suit in view of section 51 of the Bombay Public Trust Act for want of consent of Charity Commissioner for institution of the suit. Defendant claims that Jagannath Sharma was never owner of CTS No.1859, but merely a pujari at Shri Hanuman Mandir. He further, contends that he is partner of a firm namely M/s. Ashoka Laxman Hurne. Since 1967-68 the suit shops are in the possession of Hurne family. There was agreed

rent of Rs.300/- per month which is being deposited before the Rent Controller, Nanded. Defendant also claims that he is proprietor of M/s. Ashoka Laxman Hurne firm since last more than 25 years defendants had paid rent to the Jagannath Sharma regularly and during his life time i.e. up to September, 1989. After demise of Jagannath Sharma the rent is being deposited in the name of Hanuman Tekadi Trust. As such, there is no default in payment of rent.

8. Defendant denies that the suit premises is bonafide required for the plaintiff and his sons to carry on business. He ultimately prayed to dismissed the suit. During the pendency of the suit sole defendant died and therefore his L.R.'s are brought on record.

9. As clarified herein above the learned Civil Judge (Sr. Dn.) Nanded partly decreed the suit. Defendants being aggrieved has preferred RCA No.52/2025 and claims stay to the execution and operation of the judgment and decree till disposal of the appeal. The respondent has also filed cross objection with respect to findings recorded by learned trial court with respect to issue No. 1.

10. Following points arise for my consideration and I have recorded my findings thereon for the reasons recorded thereunder :-

<u>Sr.No.</u>	<u>P O I N T S</u>	<u>FINDINGS</u>
1	Whether plaintiff prove <i>prima facie</i> case to grant stay to the impugned judgment and decree?	Yes.
2.	What order ?	The application is allowed, as per final order

:: REASONS ::

AS TO POINT NOS.1 AND 2:

11. It is settled position of the law that so as to protect the possession, the defendant needs to show *prima-facie* case in his favour. He needs to demonstrate the substantial loss which he may suffer, if stay is not granted, pending appeal.

12. Mr. Ardhapurkar, learned advocate for the appellant submits that admittedly the defendant's family is in occupation of suit shops since last more than 55 years. Plaintiff or his predecessors never disputed authority of defendant or his predecessors to occupy the suit premises as a tenant of in the suit shops. Said shop are in fact owned by the Trust and not by plaintiff. Plaintiff without having ownership or any authority over the suit shops is claiming possession illegally. He submits that the learned Trial Court failed to appreciate that there is a trust created in the name of Hanuman Tekadi Mandir Trust. However, plaintiff with intention to grab the property has filed the present suit. Mr. Ardhpurkar submits that the defendant as well as his predecessors have deposited rent before the Rent Controller regularly. Plaintiff or his predecessor never applied for fixation of standard rent. The firm is in possession of the suit shops. Defendant being a partner of the firm has succeeded possession and as such his possession is just, legal and valid. Therefore, he cannot be evicted at the instance of the plaintiff.

13. Mr. Ardhapurkar submits that the trial court failed to consider that the plaintiff has come with two self-contradictory pleadings. He first claims the defendant unauthorized occupant and trespasser and then also claims defendant to be tenant. As such plaintiff himself is not sure about his own position. Learned trial court not at all dealt with this inconsistency and has erroneously decreed

the suit. Ld. Advocate submits that appellant has every hope that the impugned decree will be set aside in appeal. However, considering the long-standing possession of the defendants, they may be permitted to continue possession and to run the business till disposal of the appeal on merit.

14. *Per contra*, Mr. Kurtadikar, learned advocate for the plaintiff submits that the suit premises was initially let to Laxman Hurne. He died somewhere in 1990 and thereafter his son Ashok Hurne continued the possession of the shops as a tenant. However, Ashok Hurne died in 1993-94 and his wife Arunabai came into the possession of the suit shops. However, the present plaintiff without any right and authority came into the occupation of the suit premises. He is not at all a tenant. There is no tenancy agreement with him. He is not the family member of deceased Ashok Hurne. Plaintiff being owner is entitled to seek recovery on the strength of the title.

15. Mr. Kurtadikar also submits that the suit shops are required for the plaintiff and his sons to run a business/shop there. They have no other suitable premises for the same. Defendant is occupying the suit shops illegally since long. He cannot challenge the ownership and Bonafide need of the plaintiff and his family members. The learned Trial Court by considering entire evidence on record has rightly concluded that the suit premises is required for the plaintiff for the business purpose and hence, directed the defendant to vacate the premises.

16. Mr. Kurtadikar further submits that though there is a trust in the name of Hanuman Tekadi Mandir however, the present shops are not property of the trust. Therefore, plaintiff has every right to seek eviction of the defendant. He submits that defendant has not paid the rent of the premises to the plaintiff. The defendant himself,

behind back of the plaintiff had filed some application before Rent Controller and has deposited some meager amount before Rent Controller. He has not proved the amount deposited till date. Mr. Kurtadikar, in alternate, submits that if the court pleases to grant stay and protect possession of the defendant, then in view sub-rule (3) of rule 5 of order 41 of the Civil Procedure Code, defendant be put to a condition to pay rent to the tune of Rs.50,000/- (fifty Thousand) per month and shall deposit amount of Rs.50,00,000/- (fifty lakhs) as a security to honour the decree. He submits that defendant cannot enjoy the possession at the peril and financial loss to the owner. He also adds that during pendency of the appeal, defendant needs to be restrained from creating any third party interest in the suit premises.

17. With the assistance of both sides I have gone through the pleadings, evidence adduced on record and the judgment impugned in the appeal. On perusal of the impugned judgment, it can be gathered that the learned Trial Court has extensively dealt with all the contentions of the either side and has come to the conclusion that plaintiff is the owner of the suit shops and defendant is in possession of the same as a tenant. The learned Trial Court has also considered the aspect that there is no rent agreement between plaintiff and defendant. The learned trial court has also observed that the Firm is already dissolved on 1 July, 1993. The place of business of the firm is not mentioned in the extract of register of firms Exh.100. However, defendant has continued cloth business in the suit premises.

18. The learned Trial Court has also considered the aspect of *bonafide* requirement of the plaintiff. On appreciating evidence of both sides on this point has concluded that there is nothing on record to disbelieve contention of plaintiff that he is in need of suit shops for the business purpose. As such, the plaintiffs claim with respect to

bonafide requirement is uphold and therefore the defendant though a tenant, is directed to vacate the suit premises within three months from the date of decree. The said period is already expired.

19. From record, *prima facie*, it can be gathered that fact of continuous long-standing possession of the defendant on the suit shops is proved by the defendant in the capacity of tenant. Though the defendant has denied ownership of the plaintiff, still there is evidence on record in the form of 'Sanad' issued in favour of the father of the plaintiff to boost claim of ownership of plaintiff. The appellant has raised certain issues about legality and correctness of certain findings recorded by the trial court. Same needs to be canvassed by this court during course of the hearing of the appeal. The plaintiff has disputed the findings of issue No. 1 i.e. legality of possession of the defendant over suit premises by filing cross objection. Same also needs to be decided along with present appeal. Definitely it would require some time. Till then the possession of the defendant needs to be protected. While doing so, the interest of the owner of the suit shops needs to be protected by imposing certain conditions of deposit of rent and security on the defendant-tenant.

20. Rule 5 of Order 41 of the Civil Procedure Code empowers appellant Court to stay the execution of the decree if the appellant succeeds to show sufficient cause. Sub-rule (3) of Rule 5 provides the parameter of which an Appellate Court may stay the decree. Sub rule (3) reads as under :-

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied -

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

- (b) that the application has been made without unreasonable delay;*
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.*

21. Admittedly, the suit shops are situated in the heart of the city which is a prominent market area of Nanded city. The defendant till date has not paid rent to the plaintiff, and if any rent is deposited with the Rent Controller, same is meager i.e. at the rate of Rs.100/- to 150/- per month. Therefore, considering the average rent of the shops in the market area that too in the district place like Nanded, I find rent of Rs. 10,000/- (ten Thousand only) per month, will be reasonable. So also, the plaintiff has *prima facie* proved title over suit premises, therefore so as to have security to for the execution of the judgment and decree to be passed by this court, the defendant needs to be directed to deposit certain amount to show his Bonafide. The learned advocate of the defendant, during cross examination of the plaintiff (PW-1) has suggested that the cost of the suit shops is around **Rs. One Crore**. Therefore, defendant needs to be directed to deposit an amount of Rs.10,00,000/- (Ten lakhs only) would be reasonable security. These conditions, in my opinion are essential to balance equalities of both sides.

22. In view of aforesaid discussion, I answer point No. 1 in affirmative and in answer to point No. 2, I pass following order-

ORDER

1		Application (Exh.5) is allowed subject to following conditions:
	i.	Appellants to deposit rent at the rate of Rs.10,000/- (rupees Ten Thousand only) per

		month before this Court, from the date of filing of the appeal till further order.
	ii.	The arrears of rent (from date of filing of the appeal till date) shall be deposited within four weeks.
	iii.	Defendants shall deposit rent every month on before 10 th day of every month.
	iv.	The appellants shall deposit an amount of Rs.10,00,000/- (Ten Lakhs only) as security or furnish bank guarantee in like amount, before this court, within eight weeks from date of this order.
2		Application disposed of.
3		Call record and proceedings from the Trial Court.

Date: 16-01-2026.

(Dr.S.D. Tawshikar)
District Judge-2
Nanded

Dictated on : 16-01-2026
Transcribed on : 16-01-2026
Corrected on : 17 -01-2026
Signed on : 17-01-2026

CERTIFICATE

I affirm that the contents of this PDF judgment /order are same word to word as per the original order.	
Name of the Stenographer	: N. S. Gaikwad
Name of the Court	: District Judge-2 & Addl. Sessions Judge, Nanded.
Date of the Judgment/Order	: 16-01-2026
Judgment /Order signed by the P. O. on	: 17-01-2026
Judgment/Order uploaded on	: 17-01-2026

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