

MHTH010030472025



Received on: 08/05/2025

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Decided on: 07/04/2026

Duration: 00Y 10M 30D

Exh.22

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE, THANE,**  
**AT THANE**

(Presided over by Shri S. B. Agrawal )

**Regular Civil Appeal No.66/2025**

1. **Dr. Suvarna Shivpakash Naik Redkar**  
Age: 75 years, Occ: Medical Practitioner

2. **Sangram Shivpakash Redkar**  
Age: 50 years, Occ: Service

3. **Chaitanya Shivprakash Redkar**  
Age: 43 years, Occ: Service

All R/o. 702, Sai Shraddha Apartment, V.V,Sir  
Wacker Road, Samara Nagar, Thane (W)

Having Clinic at Shop No.1, Raghukul Building,  
Mahatma Phule Road, Napata, Thane

Appellants  
.... (Ori. Defendants)

V/s.

1. Vandana Vasudev Barve  
(Since deceased, through LRs)

2. **Amit Vasudev Barve**  
Age: 46 years, Occ: Service  
R/o. A/102, Shalibhadra Apartment, Dutta Mandir  
Road, Malad (E) Mumbai

3. **Kedar Vasudev Barve**  
Age: 51 years, Occ: Service  
R/o. A/41, Shubham Apartment, Aakarli Road,  
Kandivali (E) Mumbai

Respondents  
.... (Ori. Plaintiffs)

**Appearance:**

For Appellants: Ld. Adv. S. Balan

For Respondents: Ld. Adv. Y. L. Dadar

## **JUDGMENT**

(Delivered on this 7th day of April, 2026)

Decree for eviction on the ground of willful default and non-user of premises-namely shop admeasuring 10.5 X 15 sq.ft. on the ground floor of Raghukul Building, Mahatma Phule Road, Naupada, Thane (W) and for arrears of rent is assailed in the present appeal by the original defendant- tenant.

2] Facts material for disposal of this appeal are as under:

It is the case of the plaintiffs that the suit shop was let out to one Shivprakash Redkar who used it for his clinic at monthly rent of Rs.146.80 inclusive of permitted increases, taxes and cess, whereas the present monthly rent was Rs.450/-. Shivprakash was husband of defendant No.1. He was doctor by profession. He expired in September 2011 and defendants were his legal heirs. They did not inform the plaintiffs about the demise of Shivprakash, nor did they inform in whose' favour the tenancy was to be transferred and they were not willing to pay the rent, were in arrears of Rs.32,400/- from 01/10/2011 to 30/09/2017. They were also not using the suit shop since October 2011 and as such, notice terminating tenancy was issued on 05/10/2017, also seeking arrears of rent. But neither the rent was paid, nor the premises was vacated. In such circumstances, the present suit was filed.

3] Written statement was filed wherein it has been contended that Shivprakash had taken the premises under tenancy

agreement dated 01/06/1978 while making deposit of Rs.8500/- being construction loan. It was taken for running a dispensary. Rent of Rs.146.80 has been admitted. It is their contention that Shivprakash has consented to adjust deduction of Rs.75/- per month towards repayment of construction loan. Vide letter dated 06/08/2012, the plaintiffs were informed about the death of Shivprakash and that they were ready to give the rent. The plaintiffs agreed to give rent receipt in the name of defendant No.1, but the tenancy was not transferred. The rent was regularly paid to the plaintiff No.1, but since 2012, plaintiffs had stopped collecting the rent, although they were ready to pay the same. As such, vide letter dated 27/09/2016, a pay order of Rs.7046/- was issued but it was refused to be accepted. In such circumstances, dismissal of the suit is sought for.

4] From the aforesaid pleadings of the parties, Ld. Judge of the trial Court framed necessary issues.

5] Plaintiffs have examined Amit Vasudev Barve at Exh.30, Mahesh Bhanushali at Exh.57, Arun Boricha at Exh.59 and Vikram Gajanan Kolekar at Exh.69 and relied on property tax-bill for the year 2015-16 at Exh.33, property tax-bill for the year 2017-18 at Exh.34, rent receipt for the period April 2011 to June 2011 at Exh.35, rent receipt for the period July 2011 to September 2011 at Exh.36, notice dated 05/10/2017 to defendants at Exh.37, notice dated 30/11/2017 to defendants at Exh.38, notice dated 30/11/2017 pasted on premises at Exh.39, notice dated 27/09/2016 by defendants, authority letter Exh.70, CPL register

for the period from January 2011 to March 2024.

6] Whereas the defendants have examined Chaitanya Shivprakash Redkar at Exh.76 and relied on registered power of attorney dated 08/04/2013 at Exh.81, power of attorney of defendant No.2 at Exh.82, rent receipts of suit premises dated 18/06/1979 and 14/12/2011, death certificate of Dr. Shivprakash Redkar at Exh.84, diary maintained by defendant No.1 from 2013 to 2018 at Exh.85, letter dated 15/09/2017 with cheque dated 15/09/2017 at Exh.86, letter dated 30/08/2018 with cheque for amount of Rs.32,400/- at Exh.87, rent deposit receipt dated 02/09/2023 at Exh.88, rent deposit receipt dated 16/06/2024 at Exh.89, tenancy agreement at Exh.79, letter dated 06/08/2012 issued to plaintiff No.2 at Exh.80, advocate letter dated 27/09/2016 with copy of pay order at Exh.51, reply to notice dated 30/01/2017 at Exh.52.

7] Heard Ld. Counsels for the parties.

8] Following points arise for my consideration.

<b>POINTS</b>	<b>FINDINGS</b>
1. Whether the defendants were willfully in default of payment of rent, permitted increase in taxes and cess?	Yes
2. Whether non-user of premises was made out by the plaintiffs?	Yes
3. Whether the plaintiffs were entitled for decree for eviction and arrears?	Yes
4. Whether the impugned judgment warrants interference in the appeal?	No

5. What order? : As per final order.

### **REASONS**

#### **AS TO POINTS NO. 1 TO 5:**

9] At the outset, it would be apposite to mention that the tenancy in favour of Shivprakash Redkar has not been disputed and the agreement is placed on record at Exh.79. The ground on which the eviction is sought is default and non-user of premises since October 2011, whereas it is contended by the defendants that they were ready to pay the rent and were using the premises.

10] Section 15(2) of the Rent Act mandates issuance of notice demanding standard rent and permitted increases and 90 days is the period for compliance thereof. Notice terminating tenancy and demanding rent is allegedly issued on 05/10/2017 on the residential address of the defendants by RPAD. This notice and envelop is at Exh.37 which was returned with remark 'left'. Thereafter, it was again resent, which was returned with postal remark 'intimation'. The notice was also pasted on outer door of the suit premises on 30/11/2017 and this has come in the evidence of PW2 Mahesh Bhanushali who is another tenant, as also PW3 Arun Boricha. In their cross examination, they were asked specific time for pasting of notice, but this is not of much consequence. Since just because they are not able to give the exact time, would not render the evidence unacceptable. These witnesses are adjacent shop owners.

11] It has been contended by the Ld. Counsel for the appellant that except in the two notices dated 05/10/2017 and 30/11/2017, there is no demand of rent by the landlord. But fact remains that these notices were not complied. Merely stating that the defendants were ready and willing to pay the rent is not of any consequence.

12] As per Section 15(3) of the Rent Act, not just the outstanding rent but simple interest at the rate of 15 % per annum is also required to be paid by the tenant.

13] Ld. Judge of the trial Court, as regards discrepancy and dispute pertaining to quantum of rent, has observed that at the time the premises was given on rent admittedly the rent was Rs.146.80, but the same could not be continued to be so until 2017. It is also observed that if the defendants had to dispute the rent, they could have filed the application for fixation of standard rent which has not been done by the defendants. In such circumstances, assuming the tender of Rs.7046/-, it has been held that there has been willful default, even considering the payment of Rs.16,200/-, since outstanding was Rs.34,650/-.

14] Ld. Counsel for the appellants has relied upon the judgment of Hon'ble Bombay High Court in the case of **Vasant Mahadeo Gujar V. Baitulla Ismail Shaikh and Anr, 2016(4) ALL MR 174**. However, in the said matter, the tenant was making endeavor to pay the rent by money orders, which is not the situation in the present matter.

15] Further reliance is placed on the judgment in the case of **Lalamni Ramnath Tiwari V. Bhimrao Govind Pawar, 2001(2) Mh.L.J. 342**, where it has been held that there is no question of presumption when the packet containing notice is returned with postal endorsement 'not claimed'. In the present case, every endeavor has been made by the plaintiffs in as much as first the notice was returned with the remark 'left' and second one 'unclaimed' and thereafter the notice was pasted on the shop and it has been made out by the witnesses. As such, even this judgment would not accrue any benefit to the appellants.

16] The judgment in the case of **Surgonda Kalgonda Patil V. Ramkrishna Apa Topkar & Ors, 2022(5) ALL MR 563**, is also not applicable here since in that matter, the landlord refused to accept the money order and it has been held that the tenant was ready and willing to pay the amount and deposited the same regularly in the trial Court, which is not the situation in the present matter.

17] In such circumstances, the ground of default was clearly made out. No fault could be found in the finding in this regard.

18] As regards non-user of premises is concerned, the best evidence which could be brought before the Court, was electricity consumption bill which has not been brought on record by the defendants to show that there was regular use of the premises by them. On the contrary, the plaintiffs and the witnesses both have categorically stated that the shop in question was closed and the plaintiffs had examined PW4 Vikram Kolekar from the electricity

board who has deposed by producing the CPL register that there was no consumption denoting regular user of premises. As it is from the admitted case and the material that has come on record, it is apparent that the premises was let out for dispensary to the predecessor the defendants who is since no more, and there could be no service of notice demanding rent at the said premises and pasting was required to be done, the said ground also is made out.

19] A diary produced by the defendants showing treatment of patients at that clinic, but that is wholly insufficient evidence considering the other material on record.

20] The judgment in the case of **D. Malini wd/o M. Gopal & Ors V. Samirmal Amolakchand Kucheria & Ors, 222 Bom.R.C. 1987** would not be applicable in the present case.

21] The reliance placed on the judgment of the Hon'ble Supreme Court in the case of **Ravinder Singh @ Kaku V. State of Punjab, AIR 2022 SC 2726**, pertaining to relevance of Section 65-B of Evidence Act in a case of murder is totally misplaced. It is not that merely on the ground of register produced by PW4 Vikram Kolekar, non-user has been made out. Also in the present case, it cannot be held that the suit was not maintainable and in such circumstances, the judgment in the case of **Suka Ishram Choudhari V. Ranchhoddas Manakchand Shet Gujarathi, 1971 ALL MR Online 516 Vol. LXXIVP.220** would also not be applicable.

22] Considering all the aforesaid aspects, non-user was also clearly made out in the present case. In view of the foregoing discussion, I do not find any any infirmity in the impugned

judgment warranting interference in appeal. As such, I answer the points accordingly and pass following order.

**ORDER**

1. Appeal stands dismissed with costs.
2. Decree be drawn accordingly.
3. R&P, if any, be sent back to the trial Court forthwith.

**Place: Thane**

**(S. B. Agrawal)**

**Date: 07/04/2026**

**Principal District Judge, Thane**

Case argued on	:	<b>13/03/2026</b>
Order dictated on	:	<b>07/04/2026</b>
Transcription ready on	:	<b>07/04/2026</b>
Order checked and signed on	:	<b>07/04/2026</b>
<b>CERTIFICATE</b>		
I affirm that the contents of this P. D. F. file of Order are word to word, as per original Order.		
Name of Stenographer	:	<b>Mrs P. H. Shirolkar</b>