



Presented on	:	07/07/2006		
Registered on	:	17/07/2006		
Decided on	:	30/07/2026		
Duration	:	Year	Months	Days
		20	-	13

**IN THE COURT OF SMALL CAUSES AT MUMBAI
(BANDRA BRANCH)**

**R.A.E. & R. SUIT NO. 508 of 2006
(CNR No. MHSCA3-001485-2006)**

~~Shri Ramsevak Singh Manekraj Singh~~ (Deceased)
Aged 80 years, Occupation: Business,
Residing at Room No. 8, Ramsevak Singh
Chawl No. 1, Kurar Village,
Malad (East), Mumbai - 400 097.

1(a). Seema Santosh Singh Pillai
Age: 47 years, Residing at
Flat No. 541, Tarapur Towers,
'O' Wing, 10th Floor, Oshiwara,
Andheri (W), Mumbai – 400 053.

... Plaintiff

Versus

Shri Panchu Ribai Tiwari (since deceased)
Aged about 70 years, Occupation: Not known,
Shop No. 2B, Chawl No. 6,
Ramsevak Singh Manekraj Singh Chawl,
Kurar Village, Malad (East),
Mumbai - 400097.

1. Prithavinath
2. ~~Avdesh~~ (Deleted since deceased)

3. Vishambharnath

Ages of all above persons are not known
neither their occupation,
All residing at Village Jomohana,
Post Sonkhar, Tahsil Vasi,
District Siddharth Nagar, U.P.

4. ~~Radheyshyam~~ (Since deceased)

Age and Occupation: Not known,
Allegedly residing at Shop No. 2B,
Chawl No. 6, Ramsevak Singh
Manekraj Singh Chawl, Kurar Village,
Malad (East), Mumbai 400 097.

4(a). Smt. Vimaladevi wd/o. Radheshyam Tiwari,
Age: Not known, Occupation: Housewife,

4(b). Sujit Radheshyam Tiwari,
Age: 31 years, Occupation: Not known,

4(c). Sudhir Radheshyam Tiwari,
Age: 28 years, Occupation: Not known,

4(d). Mr. Sunil Radheshyam Tiwari,
Age: 26 years, Occupation: Not known,

4(e). Mr. Sushil Radheshyam Tiwari,
Age: 18 years, Occupation: Not known,

4(f). Mr. Mohit Radheshyam Tiwari,
Age: 15 years, Occupation: Not known,

4(g). Ms. Kiran D/o. Radheshyam Tiwari,
Age: 35 years, Occupation: Not known,

4(h). Ms. Neha D/o. Radheshyam Tiwari,
Age: 22 years, Occupation: Not known,

4(i). Ms. Priya D/o Radheshyam Tiwari,
Age: 12 years, Occupation: Not known,

All are residing at Shop No. 2B,
Chawl No. 6, Ramsevak Singh Chawl,
Kurar Village, Malad (East), Mumbai - 400 097.

Defendant Nos. 4(f) & 4(i) being minors
Through their Mother and Natural Guardian
being Defendant No. 1.

... Defendants

Appearance:

Mr. A. Y. Dwivedi, Ld. Advocate for the Plaintiff.
Mr. J. S. Pandey, Ld. Advocate for the Defendant Nos. 2 and 3.

Coram : N. R. Gajbhiye, Judge
C.R. No. 33 [B. B.].
Date : 30/07/2026

ORAL JUDGMENT:-

The present suit is filed by the plaintiff for eviction of Shop No. 2B, Chawl No. 6 Ramsevak Singh Manekraj Singh Chawl, Kurar Village, Malad (East), Mumbai – 400 097 (hereinafter referred to as the ‘suit premises’) along-with recovery of rent and interest on it.

The plaintiff's case in nutshell is as under :-

2. The plaintiff is the owner of the chawl bearing No. 6, Ramsevak Singh Manekraj Singh Chawl situated upon plot of land Survey No. 22, Hissa No. 1 and C.T.S. No. 345 situated at Kurar Village, Malad (East), Mumbai – 400 097. The defendant was the tenant in respect of the suit premises at the monthly rent of Rs. 15/- exclusive of permitted increases and municipal taxes. Since December, 1974 original defendant failed and neglected to pay the arrears of rent in spite of demand. The original defendant was not using the premises for the purpose for which it was let out for more than six months as he shifted from the suit premises to somewhere else. He has also sublet and/or

parted with possession of the suit premises to third person who was carrying out business therein. The original defendant also carried out the permanent addition and alteration by raising the height of the roof by way of constructing the walls from all sides and thereby constructed the first floor in the suit premises. He has also wasted and damaged the suit premises. The Bombay Municipal Corporation demolished the unauthorized and illegal construction carried out by the original defendant. Thereafter, the original defendant had filed the L.C. Suit No. 3304 of 1974 before the Hon'ble City Civil Court. It came to be dismissed on 22/12/2005. The plaintiff had issued the notice claiming the arrears of rent. On 05/01/2006 notice was also pasted on the door of the suit premises. It has been duly served upon the original defendant, but original defendant remained silent and not replied.

3. Original defendant filed his written statement (Exh. 8). Defendant Nos. 2 and 3 filed their written statement (Exh. 13). According to them, suit property is already declared as the slum. They are protected by the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to as 'the Slum Act'). The plaintiff is having no right to initiate the eviction proceeding against the occupants without prior permission of the Competent Authority. They are ready to deposit all the arrears of rent. They are occupying and carrying the business for themselves with the assistance of workers from the suit premises. They never carried out permanent alteration and addition. The notice never served upon them.

4. In view of pleading of both parties and documents relied by them following Issues arises for my determination and I have recorded my findings with the reasons thereon mentioned below:-

Sr. No.	Issues		Findings
1)	Does the plaintiff prove that original defendant was never ready and willing to pay the rent?	:	Yes
2)	Does the plaintiff prove that the defendants are not using the suit premises for the purpose it was let out to them since last more than 6 months?	:	Yes
3)	Does the plaintiff prove that defendant has unlawfully sublet the suit premises in favour of third person?	:	Yes
4)	Does the plaintiff prove that defendants have carried out additions and alterations of permanent nature in the suit premises and caused damage to it?	:	Yes
5)	Does the plaintiff prove that defendants are not willing and ready to observe the terms and conditions of tenancy?	:	Yes
6)	Do defendants prove that suit premises is declared as a slum area and suit is not maintainable for want of permission under Section 22 of the Slum Act?	:	No
7)	Whether plaintiff is entitled for the suit reliefs?	:	Yes
8)	What order and decree?	:	As per final order.

REASONS FOR THE FINDINGS

5. The plaintiff has relied on following documents:-
- (1) Counterfoils of rent receipts at Exh. 75 (collectively);
 - (2) Agreement dated 08/05/1962 at Exh. 76;
 - (3) Office copy of demand notice dated 22/12/2005 with postal receipt, returned RPAD packet and certificate of posting at Exh. 77 (collectively);
 - (4) Certified copy of order dated 21/11/1975 in Notice of Motion in L.C. Suit No. 3304 of 1975 at Exh. 78 and
 - (5) Certified copy of probate proceedings at Exh. 79 (collectively).

Issue No. 1:-

6. Section 15 of the Chapter III of the Maharashtra Rent Control Act indicate that, a tenant can perform his obligation and then claim protection in the form of relief against forfeiture as forfeiture offers in accordance with general law governing lease under Transfer of Property Act. The provision protect the tenant from the forfeiture when the tenant is paying rent or has proved his readiness and willingness to pay it. Section 15(3) adds further obligation upon the tenant to pay the entire arrears till date with interest and cost, as may be ordered by the Court.

7. If tenant offer or pay the amount mentioned in the notice issued in pursuance to Sub-section (2) of Section 15 together with permitted increase, the landlord is disabled from proceeding against the tenant.

8. Notice under Sub-section (2) of Section 15 of the Maharashtra Rent Control Act by way of personal tender of notice may taken place anywhere and vicarious tender or delivery can be effected at the tenant resident.

9. The plaintiff had filed the notice (Exh. 77). It came to be issued on 22/12/2005 addressed to the original defendant. The contents of notice specified that, suit premises let out to the original defendant for monthly rent of Rs. 15/- exclusive of permitted increases and municipal taxes. The defendant is in the arrears of rent since 1974 in spite of repeated demands.

10. The notice came to issued by way of registered post as per the postal receipt (Exh. 77) relied by the plaintiff. But, the closed envelop (Exh. 77) has been returned with remark 'not claimed'. The envelop specifying the name of the original defendant and address of the suit premises where the original defendant was residing.

11. Apart from it, the plaintiff had also issued the notice for claiming the arrears of rent amount since December, 1974 by way of under certificate of posting (Exh. 77).

12. During cross-examination, nothing has been suggested that, no such notice has been issued and it has not been acknowledged by the original defendant.

13. The plaintiff relied on **M/s. Madan and Co. Vs. Wazir Jaivir Chand, AIR 1989 SC 630**. The Hon'ble Court held that, when notice of termination of tenancy for the arrears of rent sent through registered post on correct address, no responsibility on center or Postman to

arrange that notice is served.

14. **Krishna Ramchandra Jadhav @ Yadav & Ors. Vs. Shankari B. Ajimal, 2005 (6) Bom. C.R. 364.** The Hon'ble Court held that, notice issued by registered AD, UCP and by pasting copy of notice on outer door of the suit premises. Notice returned with remark 'unclaimed' of registered AD. There is presumption under General Clause Act, 1897 of Section 25 and Section 114 of Evidence Act that if the notice specify the correct address of the tenant it presume to be sent and served upon the party even if it is not claimed. Not necessary to examine the Postman.

15. The Hon'ble Bombay High Court in **Hajrabai A. Gani Vs. Abdul L. Azizulla, AIR 1996 Bom. 192.** The Hon'ble Bombay High Court held that, the presumption of service under Section 27 of the General Clauses Act, 1897, Section 28 of the Bombay General Clauses Act, 1904 and under Section 114 of the Evidence Act is a rebuttable presumption that the notice was delivered to the addressee or that on being delivered it was refused by the addressee. When the notice is sent by registered post and returned with endorsement 'refused', undoubtedly it is for the defendant to adduce evidence to satisfy the Court that the same was not tendered to him. But once the defendant does so by making a statement on oath and adduces other evidence then, unless such denial is found to be prima facie incorrect, the onus will shift to the plaintiff to prove the positive that the notice was served.

16. The defendant through Power of Attorney holder has filed an application (Exh. 9) for permission to deposit arrears of rent along-with interest at the rate of 15% per annum and cost of the suit. Present application came to be decided on 05/04/2021 and the defendants

were permitted to deposit the entire arrears of rent from December, 1974 till April, 2011 at the rate of Rs. 15/- per month along-with interest thereon 3% per annum.

17. The certified copy of ledger books of account for deposit of rent disclosed that, after passing the order defendants have started depositing the rent. Initially they have deposited the rent for the period from December, 1974 till July, 2011 along-with interest of 15% per annum. The total amount was deposited Rs. 7583.25/-. The last payment was made till September, 2026. Therefore, it appears that, he had complied the order of this Court.

18. It is pertinent to note that, as per Section 15(3) of the Maharashtra Rent Control Act, the tenant has to pay or tender in the Court the standard rent and permitted increases within a period of 90 days from the date of service of summons of the suit.

19. The Ld. Advocate for the plaintiff argued that, the application (Exh. 9) came to be filed after the statutory period of 90 days from the date of service of summons.

20. The plaintiffs relied on **Sushilaben Harilal Joshi (deleted since deceased) Jyoti Harsukhrai Joshi and Ors. Vs. Triveniben Bhikhalal Busa and Ors., 2026 (1) BRC 112**. The Hon'ble Court held that, under Section 15(3) of the Maharashtra Rent Control Act a tenant must file an application and deposit arrears of rent within 90 days from the date of service of summons to claim protection from eviction, and since the applicants filed the application after 210 days, beyond the statutory period, they failed to comply with mandatory requirement. Therefore,

the eviction decree passed by the Trial Court and confirmed by the Appellate Court was proper and warranted no interference.

21. **Babulal Talakchand Shah Vs. Purshottam Shridhar Joshi, 1963 Mh.L.J. 670.** The Hon'ble Court held that, suit against sub-tenant for ejectment and arrears for over 6 months. Sub-tenant failing to pay arrears within one month of notice not entitled to relief from forfeiture.

22. The Bailiff report (Exh. 5) disclosed that, the summons was affixed on the suit premises on 24/08/2006. Thereafter, by way of registered post the summons acknowledged on 26/09/2006. Thereafter, the original defendant appeared through his advocate on 30/10/2006.

23. On the perusal of application (Exh. 9) it appears that, the original defendant filed an application on 21/04/2007 for deposit of rent.

24. Therefore, the plaintiff prove that, the original defendant filed an application (Exh. 9) for deposit of rent after the expiry of 90 days from the date of service of summon.

25. The conduct of the original defendant shows that, he was not ready and willing to pay the rent within 90 days after the service of summons.

26. Therefore, the plaintiff proved that the defendants never ready and willing to pay the rent within 90 days from the date of service of summons. Hence, I answer Issue No. 1 in the affirmative.

Issue Nos. 2 and 3:-

27. Both the issues are connected with each other. Therefore,

to avoid the repetition they are discussed together.

28. The case of the plaintiff that, the defendant was not using the suit premises for more than six months and shifted from suit premises to somewhere else.

29. During cross-examination the plaintiff admitted that, till the death of Parvatidevi, she was the tenant of the suit premises. The rent receipts (Exh. 75 (collectively)) were issued in the name of Parvatidevi Panchu Tiwari. Some of the rent receipts are in the name of the original defendant.

30. The tenancy agreement (Exh. 76) disclosed that, Smt. Parvatidevi Panchu Tiwari was the tenant of the suit premises. But, some of the rent receipts are in the name of original defendant. On 26/03/2002 Parvatidevi demised. Therefore, these rent receipts were issued in the name of the original defendant who is the husband of the Parvatidevi. Therefore, there is no irregularity that, after the death of the Parvatidevi the rent receipts were issued in the name of the original defendant.

31. As per Section 7(15)(d) of the Maharashtra Rent Control Act, tenant means in relation to any premises, when the tenant dies, whether the death occurred before or after commencement of this Act, any member of the tenant's family, with the tenant at the time of his death.

32. In the present case in hand, defendants never denied that

after the death of Parvatidevi, defendants never resided in the suit premises as a family member of the Parvatidevi. On the contrary, it is admitted that, after the death of Parvatidevi the original defendant was paying the rent.

33. The vital admission of the plaintiff that, till 26/03/2000 Parvatidevi was the tenant of the suit premises. It is the case of plaintiff that, the original tenant was not using the suit premises for the purpose it was let out for more than six months and he has shifted from the suit premises. But, further admission that, the rent receipt also issued in the name of original defendant.

34. It is pertinent to note that, the plaint is silent about since when original defendant not using the suit premises. The plaintiff has to come with the specific case that, he notice that the tenant was not using the suit premises for which it was let out for more than six months.

35. Apart from it, it is also his case that the original tenant shifted to some other place and unlawfully sublet the part of possession of the suit premises to third person. The third person was carrying the business over it.

36. During cross-examination, the defendant No. 4(a) to 4(i) came with the case that, Parvatidevi never surrendered her tenancy.

37. It is pertinent to note that, defendants never filed the rent

receipt that, when the suit came to be filed that they were in possession of the suit premises and they were continuously paying the rent.

38. Plaintiff relied on **Bhika Cullianji and Co., Bombay Vs. Avon Electric Company, Bombay & Ors., (1994) 96 BOM. L. R. 621**. The Hon'ble Court held that, the challenge to the oral evidence must be reflected in the course of cross-examination, the defendant declined to put the essential material setting out their case in cross-examination it would have to be regarded virtually as an admission and that, such an uncontraverted evidence must be acted upon by the Court.

39. **Deshraj Lakhiram Juneja Vs. Mohmad Ishaque S/o. Sk. Ismail & Anr., 2004 (4) ALL MR 15 and Vidhyadhar Vs. Mankikrao and Anr., AIR 1999 SC 1441**. The Hon'ble Court held that, party to the suit not entering to witness box give rise to adverse inference against him under Section 114 of the Evidence Act.

40. **M/s. Black Ticket Films Vs. Mr. Walter philip & Anr., 2018 (5) ALL M.R. 195**. The Hon'ble Court held that, failure to question witness on any aspect of his deposition amount to admission of those facts.

41. Admittedly, defendants have not entered into the witness box. Apart from it, during cross-examination, there is no denial that the original defendant never used the suit premises for the period of more than six months and they shifted from the suit premises and sublet the part of it.

42. Moreover, it is the case of defendants that, the original

defendant was using the suit premises. If that could be a situation then the rent receipt for that period might have been placed on record to disprove the contention of the plaintiff.

43. In absence of such denial and the documentary evidence defendants failed to show that the original defendant was in possession of the suit premises and never sublet. On the contrary, the testimony of the plaintiff appeared to be trustworthy and reliable that for more than six months the original defendant was not in possession of the suit premises and he has partly sublet the suit premises. Hence, I answer Issue Nos. 2 and 3 in the affirmative.

Issue No. 4:-

44. It is the case of the plaintiff that, the original defendant has without the consent of the plaintiff carried out the material addition and permanent alteration by raising the height of the roof by constructing the wall from all sides and thereby constructed the first floor of the suit premises.

45. Apart from it, it is the case of the plaintiff that, permanent addition and alteration carried out by the original defendant. It was demolished by the Bombay Municipal Corporation. Therefore, the original defendant had filed the L.C. Suit No. 3304 of 1974 before the Hon'ble Bombay City Civil Court and that suit came to be dismissed.

46. The plaintiff filed the copy of the order in L.C. Suit No. 3304 of 1975 (Exh. 78). On perusal of the contents of the said order, it seems that the original defendant filed the suit against the Bombay Municipal Corporation claiming that restraining the Bombay Municipal Corporation from removing or demolishing Shop No. 2B, Ramsevak Singh – Manikrajsingh Chawl No. 6 admeasuring 15' x 12' constructed of brick masonry walls and asbestos cement sheet roof situated on the plot of land bearing No. 22/1, Malad (East), Bombay without notice to show cause.

47. The original defendant in that suit came with the case that, from the front portion he carried with the business of charcoal and in the rear portion he resided with his family.

48. The observation made by the Hon'ble City Civil Court in order (Exh. 78) that, the Municipal Corporation had demolished newly erected structure on 08/05/1975.

49. During cross-examination the defendant never denied that, no permanent structure by way of addition and alteration carried out.

50. Therefore, the plaintiff has proved that, the Bombay Municipal Corporation has issued the notice under Section 354-A of Bombay Municipal Corporation Act to stop work over the suit premises.

51. It is pertinent to note that, the testimony of the plaintiff

supporting with the documentary evidence in particularly the order (Exh. 78) that, the original defendant carried out the permanent addition and alteration by raising the height of the roof and constructed the first floor.

52. The plaintiff made contention that, without his consent the permanent alteration and addition carried out by the original defendant. In such situation, it was necessary on the part of the defendants to raise the specific pleading in written statement setting out particular of consent in writing. But, defendants neither given particulars nor factum of landlord giving consent is stated. The written statement does not even whisper about consent given by landlord and forming a part of record of Municipal Corporation.

53. Defendants have an opportunity for summoning the original record from Municipal Authority which could have shown the bonafideness of the tenant that, the construction carried out was not of a permanent structure but, with the consent of the landlord.

54. Apart from it, no efforts for production of alleged consent in writing appears to have been made by the original defendant.

55. In view of supra discussion I hold that, the plaintiff has proved that, the original defendant without his consent carried out the permanent alteration and addition in the suit premises. Hence, I answer Issue No. 4 in affirmative.

Issue No. 5:-

56. It is the case of the plaintiff that, the original defendant breached the terms and conditions of the tenancy.

57. Admittedly, defendants could not brought on record that, after let out the premises, regularly the rent was paid. It is pertinent to note that, if the tenant not paying the rent regularly means he had breached the condition of tenancy.

58. Moreover, the original defendant carried out the permanent alteration and addition without his consent. There is no denial on the part of the defendants that, they never committed any act contrary to the terms of tenancy. On the other hand, the testimony of the plaintiff appeared to be trustworthy and reliable that, the original defendant was not regularly paying the rent since December, 1974. Apart from it, he has not used the suit premises for more than six months. Therefore, he has committed the breach of terms of tenancy. Hence, I answer Issue No. 5 in the affirmative.

Issue No. 6:-

59. The original defendant has raised the contention in his written statement that, the suit is barred by the provisions of the Slum Act as no previous permission from the Competent Authority has been taken before filing of the present suit.

60. The contention raised by the defendant that, the suit premises situated in the slum area and Section 22 of the Slum Act requires the

prior permission. The burden is upon the defendants to prove that, the suit premises declared by the Government/Authority as a slum area. Therefore, on that count suit is barred under Section 22 of the Slum Act.

61. The plaintiff relied on **Shashikant Narottam Lade (since deceased through L.Rs.) Vs. Smt. Shankari B. Ajimal & Anr., 2009 (2) All MR 303**. The Hon'ble Court held that, protection claimed under Section 4(a) of the Slum Act the burden lies upon the tenant to prove that, the suit premises situated on the Government land and fall within the ambit of Slum Area Act.

62. But, defendants never lead any evidence to support their contention. It is pertinent to note that, in support of the contention that, the suit premises is declared as a slum by the Government Authority, the documentary evidence is expected from the party who has raised the contention about it. In absence of such documentary evidence particularly the notification of the area it cannot be proved that, the suit premises notified by the Authority/Government under the slum area. The defendants have failed to produce such documentary evidence. Therefore, defendants failed to prove that, the suit premises is declared as a slum area and suit is not maintainable for want of permission under Section 22 of the Slum Act. Hence, I answer Issue No. 6 in the negative.

Issue No. 7:-

63. In view of my finding to Issue No. 1 it has been held that, defendants during pendency of the suit had paid the rent which was due and also for a subsequent period till September, 2026. Therefore, the plaintiff is not entitled to recover the arrears of rent.

64. In view of my findings to Issue Nos. 2 to 6 in affirmative, the plaintiff is entitled to recover the possession of the suit premises. Hence, I answer Issue No. 7 in the affirmative. Hence, I proceed to pass the following order:-

: ORDER :

1. The suit is decreed with costs.
2. Defendants are directed to handover the vacant and peaceful possession of the suit premises to the plaintiff.
3. The decree be drawn up.

(Dictated and pronounced in open Court.)

Date: 30/07/2026

sd/-
(N. R. Gajbhiye)
Judge, C. R. No. 33

Judgment dictated and typed on : 30/07/2026.
Judgment checked and signed on : 30/07/2026.