

Decree

Recd
Amendment carried
18/1/19

IN THE COURT OF SMALL CAUSES

AT BANDRA, MUMBAI

RAB SUIT NO. 127 OF 2019

Exh. 38

A
Decree

Patrick D'Souza (since deceased)
through his legal representatives
Mrs. Lorna Marina Sandhu & 3 Ors. } Plaintiffs

V/-

Arlene Barretto & Anr. } Defendants

AMENDED PLAINT



Patrick D'Souza (since deceased through)

His Legal Representatives namely,)

1. Mrs. Lorna Marina Sandhu of Mumbai,)

Adult Female Indian Inhabitant aged)

about 64 years; Occ.: Housewife;)

residing at C-509, Leela Sagar, Next to)

St. Anthony High School, Yari Road,)

Versova, Mumbai-400 061.)

2. Mr. Clyde Patrick D'Souza of Mumbai,)

Adult Male Indian Inhabitant aged about)

62 years; Occupation: Service; presently)

residing at Plot No. 31, Dominic Villa,)

Cesar Road, Andheri (West),)

Mumbai-400 058.)

3. Mr. Nigel Fred D'Souza of Mumbai,)

Adult Male Indian Inhabitant aged about)

59 years; Occupation: Unemployed at)

Present; residing at 302-A, Bhairav)

Co-op. Housing Society Ltd., Off Veera)

Desai Road, Andheri (West),)

Mumbai - 400 058.)

Mrs. Ashtrid Louisa Potts nee D'Souza,)

a P. I. O. and a Permanent Resident of)

Quebec, Canada, aged about 52 years;)

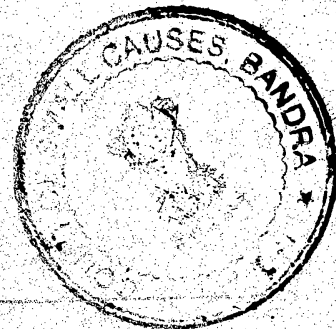
Occupation: Housewife; presently)

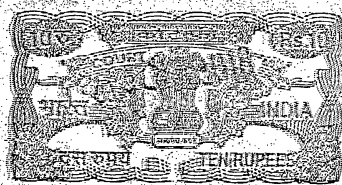
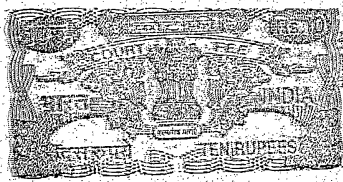
residing at 12, Rue Lakeview, Baie D'urfe)

Quebec, Canada H9X3B1.)

Being L.Rs. of deceased original Plaintiff)

Plaintiffs





E.13
B

IN THE COURT OF SMALL CAUSES AT MUMBAI

Stamp No. 1114 2018

R.A.E. SUIT No. 127 of 2018 2019

Patrick D'Souza of Mumbai; Adult Male)

Indian Inhabitant aged about 96 years;)

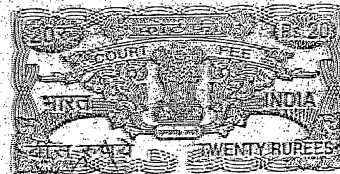
Occ.: Retired; residing at 31, Dominic)

Villa, Ground Floor, Caesar Road,)

Amboli, Andheri, Mumbai - 400 058.)

through his son and Constituted Attorney,)

Mr. Clyde Patrick D'Souza.)



0
R38

Judge
CP37
30/11/19

*Plaintiff's son
Mr. Stanley Patrick
D'Souza is the
Plaintiff*

Versus

1. Arlene Barreto of Mumbai; Adult Female)

Indian Inhabitant age : not known; Occ.:)

Service; a tenant-in-common and as one of)

the heir of the deceased tenant-in-common)

of part of a block comprising of a Hall and)

a kitchen situated on the 1st Floor of the)

building known as Dominic Villa situate at)

Caesar Road, Amboli, Andheri, Mumbai -)

400 058; and presently residing at 36-A,)

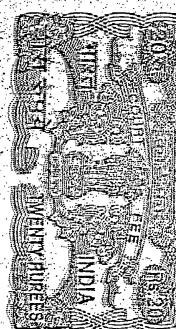
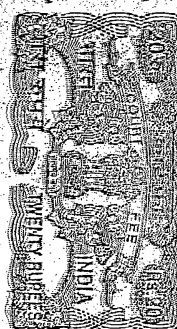
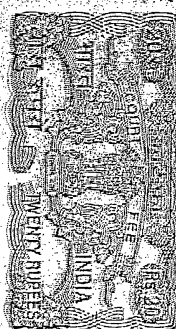
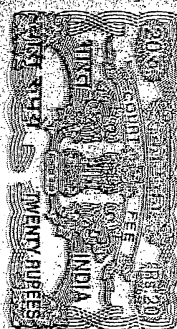
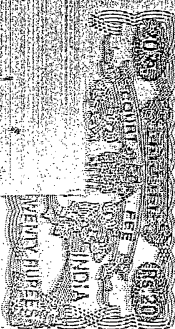
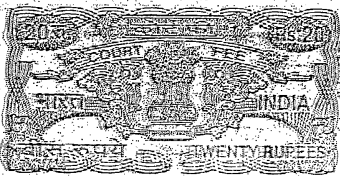
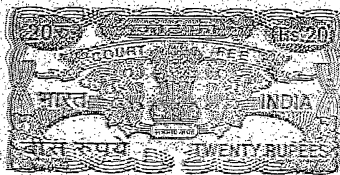
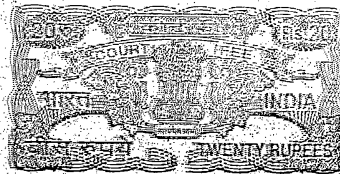
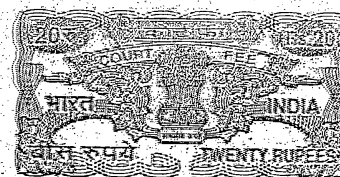
Chuin Village, Khar (W), Mumbai-400052)

2. Conchitta Issac Barreto of Mumbai; Adult)

Female Indian Inhabitant age : not known;)

Occ.: Service; in her capacity as the heir of)

the deceased tenant-in-common of part of)



24

the block on the 1st Floor of the building)
known as Dominic Villa situate at Caesar,)
Rd., Amboli, Andheri, Mumbai – 400 058;)
and also presently residing at 36-A, Chuim)
Village, Khar (W), Mumbai-400052) Defendants

THE PLAINTIFF ABOVENAMED STATES AS FOLLOWS:-

1. This is a suit for eviction of the Defendants from part of the block located on the 1st Floor of the building known as Dominic Villa situate at 31, Caesar Road, ^{CTS no 361/1, 363,} Amboli, Andheri, Mumbai-400058, comprising of one living room and one kitchen admeasuring 10' 3" X 11' 6" and 10' X 11' 10" respectively with independent toilet and bathroom situate adjacent to the two rooms now in the possession of the son and Constituted Attorney of the Plaintiff, Mr. Clyde Patrick D'Souza, which is hereinafter for short, "the suit premises". The suit premises is bounded on the East by the single storey tiled house attached to the suit building; on the West by the building known as "Dorris Terrace" standing on Municipal Plot No. 30 ; on the North by the garden compound of the suit building bordering Ceasar Road; and on the South by single storey house by the name "Berryline Home" constructed on Municipal Plot No. 58 . The instant suit for eviction of the Defendants from the suit premises has been sought for on the grounds of nuisance, bonafide requirement and non-user thereof without reasonable cause therefor for a continuous period of more than six months immediately preceding the institution of the instant suit under Sec. 16(1) (b), (g) and (n) of the Maharashtra Rent Control Act, 1999, (hereinafter for facility

.....3/-



2. The deceased Plaintiff was the Landlord of the suit premises. The Plaintiffs Nos. 1(a) to 1(d), as the legal representatives of estate of the deceased Original Plaintiff, have a right to continue the suit. Accordingly, the Plaintiffs 1(a) to 1(d) are deemed to have instituted the instant suit and are therefore correspondingly referred to as Plaintiffs.

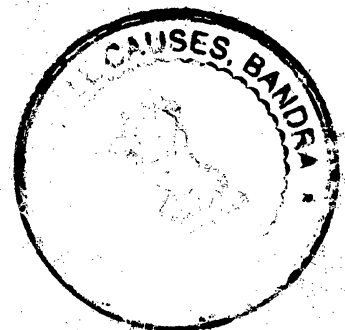


of reference, "the Rent Act"). The brief facts of the case are set out in the following paragraphs.

2. *See para 2* ~~The Plaintiff is the Landlord of the suit premises and due to his old age and related weakness, he is prosecuting the instant suit through his son and~~ *Constituted Attorney, Mr. Clyde D'Souza.* The 1st Defendant is the tenant-in-common and also one of the heirs of the deceased tenant-in-common of the suit premises, being his widow. The 2nd Defendant is also a heir of the deceased tenant-in-common, being his daughter out of his marriage with the 1st Defendant and is accordingly joined as Party-Defendant in the instant suit inasmuch as there is neither any disclosure of an agreement between the 1st and 2nd Defendants herein for the purpose of devolution of the tenancy rights of the deceased tenant-in-common in respect of the suit premises to any one of his heirs namely, the 1st and 2nd Defendants, as contemplated by Sec. 7(14)(d) of the Rent Act nor is there any declaration of this Hon'ble Court in this behalf, the suit premises being situate in Mumbai within the exclusive jurisdiction of this Hon'ble Court.

3. The deceased tenant-in-common, the Late Mr. Issac Barreto, along with his wife during his lifetime, were the tenants-in-common of the suit premises as it then was, comprising of one living room, two bedrooms and a kitchen. However, in terms of the decree dated 5th April 2005 passed by the Appellate Bench of this Hon'ble Court in Appeal No. 148 of 2001 modifying the decree dated 8th June 2001 passed by this Court (ie. The Trial Court) in R.A.E. Suit No. 687/2194 of 1988, the Defendants herein had to quit, vacate and deliver *vacant possession* of the two bedrooms of the suit premises as it then was to the Plaintiff. The decree

.....4/-



of the Appellate Bench of this Hon'ble Court supra was unsuccessfully carried by the Defendants herein to the Hon'ble Bombay High Court at Mumbai in its Appellate Side by way of a Writ Petition, being W.P. No. 5038 of 2005. The said Writ Petition came to be dismissed in limine on 13th September, 2005. As a result, pursuant to the execution and/or implementation of the decree of the Appellate Bench of this Hon'ble Court supra, that has now received a finality, the suit premises was downsized and the Defendants herein were left with only the living room and the kitchen with attached toilet and bathroom, which is the suit premises for the purposes of the instant suit.

4. As already set out in para 1 hereinabove, the ^{deceased} Plaintiff had instituted the instant suit on the grounds of nuisance, reasonable and bonafide requirement and non-user of the suit premises without reasonable cause for more than six months immediately prior to the institution of the instant suit. The particulars of each of the grounds taken by the ^{deceased} Plaintiff for a lawful eviction of the Defendants from the suit premises in accordance with the provisions of the Rent Act are respectively set out hereinafter.

5. The Plaintiff states that the premises has remained unoccupied without reasonable cause since about the year 2013. The Plaintiff further states that the Defendants are residing at their present address given in the cause-title of the plaint in the instant suit ever since the beginning of the year 2006 save and except for a few visits to the suit premises by Defendant No. 1 to collect letters dropped therein by the postal authorities and also for collecting the electricity bills and other notices (if any) for the purpose of creating evidence of user of

.....5/-



the suit premises. Thus the Defendants have been holding on to the suit premises only to cause embarrassment, nuisance and annoyance to the Plaintiff. The Plaintiff respectfully says and submits, that the aforesaid non-user of the suit premises have given rise to increasing pests like cockroaches, ants, white-ants, etc. therein. These pests find their way into the common space appurtenant to the suit premises that is leading to the staircase of the suit building. As such, there is every likelihood of these pests may infest the neighbouring tenements including the two rooms handed over to the Plaintiff under the decree passed by the

Appellate Bench of this Hon'ble Court supra, which is now in the possession of Plaintiff (16)

~~the son and Constituted Attorney of the Plaintiff instituting the instant suit on behalf of the Plaintiff.~~ There is no gain-saying that that these pests are a constant

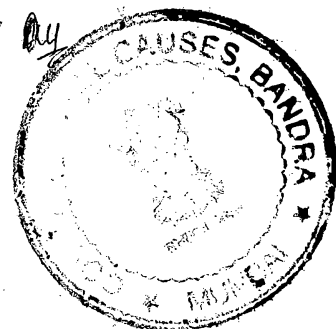
source of nuisance and annoyance to the neighbouring occupants including the Plaintiff No. 1 (6)
~~Plaintiff's aforesaid son;~~ and the cause for the same is the lack of proper upkeep

of the suit premises by the Defendants. It is needless to place on record, that the proper upkeep of a demised premises by any tenant, besides being one of the incidents of tenancy, is also a legitimate expectation of any landlord. Thus the Defendants herein are guilty of a conduct which is a constant nuisance and

annoyance to the neighbouring occupants including Plaintiff No. 1 (6)
~~the aforesaid son of the~~ Plaintiff, Mr. Clyde, who is occupying the adjoining two rooms in the manner aforesaid. The Plaintiff craves leave to refer to and rely on photographs in and outside the suit premises to drive home his aforesaid contention..

6. ~~The Plaintiff says that his relationship with the sons has been reconciled after the death of his differently abled daughter. His son, more particularly, Mr.~~

.....6/-



deceased
Clyde D'Souza, and his wife, are taking care of him very well. The Plaintiff *has*
left behind
Plaintiff No. 1 (B)
states that he has two grand-children through his son Mr. Clyde a grandson and
a granddaughter. The grandson, Randel, is 31 years of age. The grand-daughter,

Alisa, is 26 years of age. Both these children are of marriageable age. The

deceased
Plaintiff states that his grandson, Randell, is unable to get married for want of
independent accommodation and privacy. The *deceased* Plaintiff *therefore intended* to hand

over the suit premises to his said grandson, Randell, in order to see that he is

deceased
happily married with his own family. The Plaintiff therefore required the suit

premises reasonably and bonafide for the use and occupation of his aforesaid

grandson, who, as aforesaid is of marriageable age, but unable to get married for

want of independent accommodation and privacy. This would not cause any

hardship to the Defendant inasmuch as the suit premises within the control of the

Defendants has remained unoccupied for the last several years from the

beginning of the year 2013. The Plaintiff therefore says and submits that his

claim for possession of the suit premises from the Defendant on this ground is

reasonable and bonafide.

7. As already set out in the foregoing paragraphs, the suit premises has been

vacant and unoccupied for the last several years from the beginning of the year,

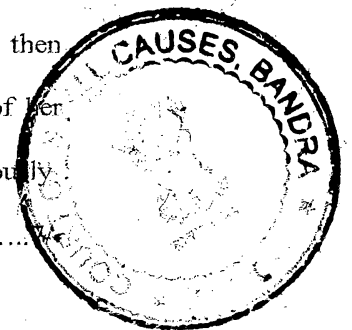
2013. The Defendants are at present residing at the home at Khar (West),

Mumbai, which is the share of the father of Defendant No. 1 in the jointly owned

and occupied bungalow after partition between the brothers, who were till then

jointly occupying the same. The Defendant No. 1, being the only child of her

father, fully inherited her said father's share in the aforesaid bungalow. Obviously



then, the suit premises has not been used and/or occupied by the Defendants without reasonable cause for the residential purpose for which it was let for a continuous period of more than six months immediately preceding the institution of the instant suit. The Defendants have therefore forfeited their protection under the Rent Act on this ground of non-user of the suit premises without reasonable cause for the purpose for which it was let for a continuous period of more than six months immediately preceding the institution of the instant suit.

8. As already set out in the foregoing paragraphs, the suit premises has been vacant and occupied for the last several years from the beginning of the year, 2013. The Plaintiff therefore reasonably apprehends, that the Defendants may part with possession and/or create third-party rights to the prejudice of the Plaintiff. The Plaintiff therefore seeks a permanent order and injunction of this Hon'ble Court restraining the Defendants, either by themselves or by their agents and/or servants from parting with possession of the suit premises or creating third-party rights therein of whatsoever nature; and for interim and ad-interim reliefs in terms thereof.

9. In the events that have happened, and under the circumstances, as set out hereinabove, the Plaintiff says and submits, that he entitled to possession of the suit premises on the grounds pleaded and elucidated hereinabove. The Plaintiff is therefore justified in seeking a decree from this Hon'ble Court for possession of the suit premises from the Defendants.

10. The cause of action for the instant suit accrued to the Plaintiff in January, 2013; and as such the instant suit for possession is within the period of twelve

.....8/-



2013; and as such the instant suit for possession is within the period of twelve years prescribed therefor by Article 65 of the Law of Limitation. The instant suit is therefore within time prescribed by the Law of Limitation.

11. The suit premises is situated at Andheri (West), Mumbai, within the territorial jurisdiction of this Hon'ble Court. The suit is substantially one between a landlord and a tenant-in-common (ie. Defendant No. 1) and the heirs of the other deceased tenant-in common (ie. the husband of Defendant No. 1 and the father of Defendant No. 2). Hence this Hon'ble Court has exclusive jurisdiction to try and entertain the instant suit as contemplated by Sec. 33(1)(a) and (c) of the Rent Act.

12. The monthly of the suit premises is Rs. 122/- Therefore the annual rack-rent of the suit premises works out to Rs. 1464/-. The Plaintiff therefore values the suit for court-fees and jurisdiction at Rs. 1464/- and has accordingly, paid the court-fees in the sum of Rs. 260/- thereon.

13. The Plaintiff will rely on documents as per the accompanying list. *There is no other suit filed by the Plaintiff on the same subject-matter in this Court and for that matter in any other Court in India.*

14. The suit premises does not come or fall within the provisions of the Maharashtra Sllums Act or the Maharashtra Vacant Lands Act.

15. The Plaintiff therefore prays:-

(a) That the Defendants may be order and directed by a decree of this Hon'ble Court to quit, vacate and hand over peaceful possession of the suit premises namely the part of the block comprising of two room namely, a living room admeasuring 10' 3" $\times$ 11' 6" and a kitchen admeasuring 10' $\times$ 11' 10" situate on the 1st Floor of the building known as Dominic Villa at 31, Ceasar Road, Andheri (West), Mumbai-

.....9/-



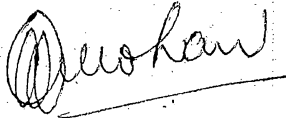
400058, more particularly described in para 1 of the plaint to the Plaintiff.

(b) The Defendants, either by themselves, or by their agents and/or servants, may be restrained by an order and permanent injunction of this Hon'ble Court from parting with possession of the suit premises namely the part of the block comprising of two room namely, a living room admeasuring $10' 3'' \times 11' 6''$ and a kitchen admeasuring $10' \times 11' 10$ situate on the 1st Floor of the building known as Dominic Villa at 31, Ceasar Road, Andheri (West), Mumbai-400058, more particularly described in para 1 of the plaint and/or creating third-party rights of whatsoever nature in respect thereof.

(c) For interim and ad-interim reliefs in terms of prayer (b) above;

(d) For costs and such other reliefs, as the nature and circumstances of the case may require.

Dated the 19th Day of December, 2018.



Advocate for the Plaintiff

C. A. of the Plaintiff

.....10/-



RE VERIFICATION

1-
Rider 3
1-
I, Mr. Clyde Patrick D'Souza, the Plaintiff No. 1(b) abovenamed,
aged about 64 years; Occupation: Service; presently residing at 31, Dominic
Villa, Ceasar Road, Andheri (West), Mumbai - 400 058, do hereby solemnly
declare that what is stated in the foregoing paragraphs of the plaint, as
amended, are true to my own knowledge, information and belief, I believe
the same to be true.

Solemnly Declared at Mumbai)

This 8th Day of September 2021.)

Sd/-

Mr. Clyde Patrick D'Souza

Identified by me

Sd/-

Mohan A. Dharmaraj,

Advocate for the Applicants

S. V. Filed

Sd/-

Asst Kans / Interpreter
Court No. 37, Small Causes Court, Bandra



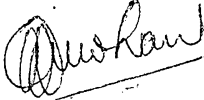
VERIFICATION

I, Mr. Clyde Patrick D'Souza, the son and Constituted Attorney of the Plaintiff, aged about 61 years; Occupation: Service; presently residing on the 1st Floor of the building known as Dominic Villa, 31, Ceasar Road, Andheri (West), Mumbai-400058, do hereby swear in the name of God and state that I am conversant with the facts of the case and that what is averred in the foregoing paras of the plaint are true to my own knowledge, information and belief, and I believe the same to be true.

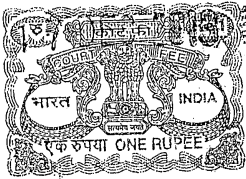
Sworn at Mumbai,)

This 19th Day of December, 2018.)

Identified by me.



Advocate for the Plaintiff



RE VERIFICATION
See Rider 3



16

IN THE COURT

IN THE COURT OF SMALL CAUSES

AT BANDRA, MUMBAI

St. No. of 2018

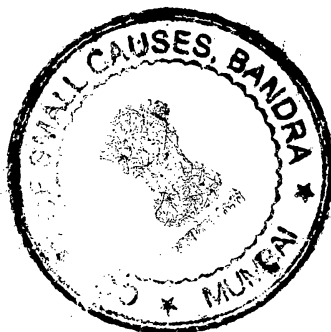
R. A. E. SUIT No. OF 2018

Patrick D'Souza Plaintiff

V/s.

Arlene Barreto & Anr. Defendants

PLAINT



Dated the Day of December, 2018

MOHAN A. DHARMARAJ &
SUSHILA MOHAN DHARAMRAJ

Advocates for the Plaintiff

15, Lamba Building,

Sir Bhalchandra Road,

Matunga, Mumbai-400 019.

Mob.: 9819488453/9653102173.

IN THE COURT OF SMALL CAUSES AT MUMBAI
BANDRA BRANCH

R.A.E. SUIT NO.127 OF 2019
(CNR : MHSCA3-000277-2019)

DECREE

Patrick D'Souza of Mumbai
(since deceased) through his
Legal Representatives
Adult Male Indian Inhabitant
aged about 96 years; Occ.: Retired,
Residing at 31, Dominic Villa,
Ground Floor, Caesar Road,
Amboli, Andheri, Mumbai – 400 058
Through his son and Constituted Attorney,
Mr. Clyde Patrick D'Souza
M – 9223300554

Email – clyded'souza.cd@gmial.com

1a. Mrs. Lorna Marine Sandhu of Mumbai,
Adult Female, Indian Inhabitant
Aged about 64 years, Occ.: Housewife,
Residing at C-509, Leela Sagar,
Next to St. Anthony High School,
Yari Road, Versova, Mumbai – 400 061.

1b. Mr. Clyde Patrick D'Souza of Mumbai,
Adult Male Indian Inhabitant
Aged about 62 years,
Occupation : Service, presently
residing at Plot No.31, Dominic Villa,
Caesar Road, Andheri (West),
Mumbai – 400 058.



1c. Mr. Nigel Fred D'Souza of Mumbai,
Adult Male, Indian Inhabitant
Aged about 59 years,
Occupation : Unemployed, at presently
Residing at 302-A, Bhairav Co-op.
Housing Society Ltd., Off Veera
Desai Road, Andheri (West),
Mumbai – 400 058.

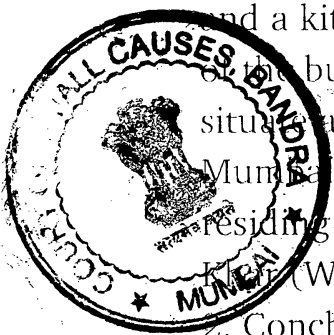
1d. Mrs. Ashtrid Louisa Potts nee D'Souza,
a P.I.O. and a permanent resident of
Quebec, Canada, aged about 52 years,
Occupation: Housewife, presently
residing at 12, Rue Lakeview,
Bale D'urfe Quebec, Canada H9X3B1.
Being L.Rs. Of deceased original plaintiff

.... Plaintiffs

Versus

1. Arlene Barreto of Mumbai,
Adult Female, Indian Inhabitant
Age : not known, Occ.: Service,
a tenant-in-common and as one of
the heir of the deceased tenant-in-common
of part of a block comprising of a Hall
and a kitchen situated on the 1st Floor
of the building known as Dominic Villa
situated at Cesar Road, Amboli, Andheri,
Mumbai – 400 058, and permanent
residing at 36-A, Chuim Village,
(Weset), Mumbai – 400 052.

2. Conchitta Issac Barreto of Mumbai,
Adult Female, Indian Inhabitant
Age : not known, Occ. : Service,
in her capacity as the heir of the
deceased tenant-in-common of part of
the block on the 1st Floor of the



building known as Dominic Villa
situate at Caesar Road, Amboli,
Andheri, Mumbai – 400 058,
and also presently residing at
36-A, Chuim Village, Khar (W),
Mumbai – 400 52.

... Defendants

Advocate for the plaintiffs : Mr. Mohan A. Dharmaraj.

Suit is proceeded without written statement against the defendants.

CORAM :- Shri. D. P. Kasat

Court Room No.37 (B.B.)

Date : 02nd March, 2024

Claim : Rs.-2640/-

This suit came on board for final judgment on 02nd March 2024 before the Hon'ble Judge Shri. D. P. Kasat in the presence of Holding advocate for plaintiff Advocate Mr. Mohan A. Dharmaraj and Suit is proceeded without written statement against the defendants.

Exh-37/A - Judgment:

1. The suit is hereby decreed with costs.
2. The defendants are hereby directed to deliver vacant and peaceful possession of the suit premises to the plaintiffs, within a period of one month from the date of this order.
3. Decree be drawn up accordingly. The defendants are hereby restrained from creating any sort of third party interest in the suit premises in any way, till delivery of its possession to the plaintiffs.
4. At this juncture, it is also essential to mention that by virtue of an application at Exh.34 and order dated 24.07.2023, the defendant has deposited the keys of suit premises in this court. Accordingly, the plaintiffs are at liberty to accept those keys from the Additional Registrar of this court and recover possession of suit premises.
5. Decree be drawn up accordingly

Date : 02/03/2024



Sd/-
(D. P. Kasat)
Judge, C.R. No. 37 (BB)

IN THE COURT OF SMALL CAUSES AT MUMBAI

(BANDRA BRANCH)

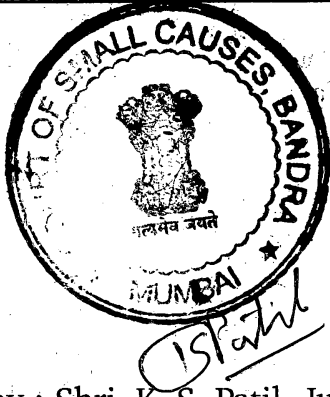
IN

R.A.E. SUIT NO.127 OF 2019

(CNR : MHSCA3-000277-2019)

BILL OF COST

				Plaintiffs		Defendants	
				Rs.	Ps.	Rs.	Ps.
1	Stamp on Plaint	...	...	260	00	00	00
2	Stamp on S.V.	...	...	10	00	10	00
3	Stamp on Applications/Exhibits	...	...	70	00	60	00
4	Pleader's Fee	...	...	259	80	259	80
5	Commissioner's Fee	...	...	00	00	00	00
6	Subsistence of Witness	...	...	00	00	00	00
7	Service of Process	...	...	15	00	00	00
TOTAL				614	80	329	80



Given under my hand and seal of the Court.

This 02nd day of March, 2024

(D. P. Kasat)

Judge

C.R.No.37 (B.B.)

Compared by : Shri. K. S. Patil, Judicial Clerk, C.R. No.37.

Typed by : Shri. A. S. Salve, Cl-Ty, C.R. No.37.

Advocate for the plaintiffs : Mr. Mohan A. Dharmaraj.

Suit is proceeded without written statement against the defendants.