

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 280 OF 2024

Nazim Shaikh Hasan

.....APPLICANT

: VERSUS :

Janbi Mustaq Shaikh (since deceased through LRs).

....RESPONDENT

Mr. Avinash B. Avhad (through V.C.) with Mr. Sachin Gawade, for the Applicants.

Mr. Rajesh More, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON: 18 MARCH 2026.

JUDG. PRON. ON: 01 APRIL 2026

JUDGMENT:

1) The Applicant has filed the present Revision Application challenging the judgment and order dated 24 November 2023 passed by the District Court, Pune dismissing Regular Civil Appeal No. 625/2015 and confirming the judgment and order dated 19 September 2015 passed by the Small Causes Court decreeing Civil Suit No. 384 of 2010 and

directing the Applicant-Defendant to handover vacant possession of the suit premises to the Plaintiff-Respondent.

2) A shop on the ground floor of the building admeasuring 200 sq.ft. bearing House No.3031, S.No.51, Mitha Nagar, in front of Vishwakarma Building, Kondhwa Khurd, Pune are the '**suit premises**'. Plaintiff is the owner of the suit premises who has let out the same to the Defendant for the business of grocery and stationery articles for monthly rent of Rs.1,500/-. It appears that during currency of tenancy, Plaintiff agreed to sell the suit premises to the Defendant for consideration of Rs.1,90,000/- and accordingly, an Agreement for Sale was executed on 21 September 2004. Out of the agreed consideration, Defendant paid amount of Rs.40,000/- to the Plaintiff towards earnest money and remaining amount of Rs.1,50,000/- was to be paid within 3 months. According to the Plaintiff, Defendant failed to comply with the terms of the Agreement and did not pay remaining sum of Rs. 1,50,000/- and that therefore, the transaction of sale deed did not fructify, and Defendant continued as a tenant in respect of the suit premises.

3) Plaintiff alleged default in payment of rent on behalf of the Defendant. Plaintiff also expressed *bona fide* requirement in respect of the suit premises. Plaintiff also raised allegation of change of use in respect of the suit premises. Plaintiff issued notice dated 21 July 2010 demanding possession of the suit premises and thereafter filed Civil Suit No. 384 of 2010 in the Court of Small Causes at Pune on 28 September 2010. The Defendant resisted the suit by filing Written Statement questioning the quantum of rent. Defendant raised contention of landlord-tenant relationship coming to an end upon execution of Agreement for Sale. It was contended that Defendant has paid amount of

Rs.90,000/- to the Plaintiff and was ready and willing to pay balance amount of Rs.1,00,000/-. Defendant prayed for dismissal of the suit.

4) Based on the pleadings, the Trial Court framed issues relating to allegation of default in payment of rent, existence of landlord-tenant relationship, *bona fide* requirement, change of user etc. Parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the Suit by judgment and order dated 19 September 2015 by holding that landlord-tenant relationship continued even after execution of the Agreement for Sale. The Trial Court upheld *bona fide* requirement of the Plaintiff and held that Plaintiff would suffer greater hardship. The issue of change of user was also decided in favour of the Plaintiff. However, the ground of default in payment of rent was rejected. Accordingly, Defendant was directed to handover vacant possession of the suit premises to the Plaintiff by decree dated 19 September 2015.

5) Defendant filed Regular Civil Appeal No. 625 of 2015 before the District Court, Pune challenging the judgment and decree of the Trial Court. During pendency of the Appeal, the Appellate Court fixed the interim compensation in respect of the suit premises and directed the Defendant to deposit the same. By judgment and order dated 24 November 2023, the Appellate Court has proceeded to dismiss Regular Civil Appeal No. 625 of 2015 preferred by the Applicant. The Applicant has accordingly filed the present Revision Application challenging the decisions of the Trial and the Appellate Courts. By order dated 26 June 2024, this Court issued notice in the Revision Application and stayed the execution of the eviction decree. Respondent/Plaintiff has appeared in the Revision Application. With the consent of the learned counsel appearing

for the parties, the Revision Application is taken up for hearing and final disposal.

6) Mr. Avhad, the learned counsel appearing for the Revision Applicant submits that the Trial Court has grossly erred in decreeing Plaintiff's Suit ignoring the position that the landlord-tenant relationship had come to an end with Agreement for Sale dated 21 September 2004. That upon execution of the said Agreement, tenancy came to an end and Defendant remained in possession of the suit premises as a prospective purchaser. That possession of the suit premises post 21 September 2004 was towards part performance of the Agreement for Sale under Section 53A of the Transfer of Property Act, 1882 (**Transfer of Property Act**). That the Small Causes Court did not have jurisdiction to entertain the suit of the Plaintiff who ought to have filed suit before the Civil Court for recovery of possession granted towards part performance of Agreement for Sale. That it was necessary to secure a declaration from the Civil Court that the Agreement was terminated. He submits that provisions of Section 17(1A) of the Registration Act, 1908 (**Registration Act**) have no application in the facts and circumstances of the present case, where execution of Agreement for Sale is not under dispute.

7) In support of his contention that execution of Agreement for Sale by a landlord in favour of a tenant brings the tenancy to an end, Mr. Avhad relies on judgment of the Apex Court in **R. Kanthimathi and other vs. Mrs. Beatrice Xavier**¹. On above broad submissions, Mr. Avhad would pray for setting aside the impugned eviction decree.

¹ AIR 2003 SC 4149

8) The Application is opposed by Mr. More, the learned counsel appearing for the Respondent-Plaintiff. He submits that the provisions of Registration Act have been amended by insertion of sub-section (1A) in Section 17 from 24 September 2001, under which Agreement for Sale of immovable property is required to be registered for the purpose of application of provisions of Section 53A of the Transfer of Property Act. That sub-section (1A) of the Registration Act specifically provides that if the agreement is not registered, the same cannot have effect for the purpose of Section 53A of the Transfer of Property Act. He submits that in the present case, the Agreement for Sale dated 21 September 2004 is an unregistered document. That since the same is executed after introduction of sub-section (1A) in Section 17 of the Registration Act, the same is irrelevant for the purpose of application of provisions of Section 53A of the Transfer of Property Act. That in any case, mere execution of Agreement for Sale does not bring to an end the landlord-tenant relationship. He relies on judgment of the Apex Court in H.K. Sharma vs. Ram Lal², which distinguishes the judgment in *R. Kanthimathi* (supra). Mr. More would take me through the Agreement for Sale in support of his contention that the Agreement was executed subject to condition of sanction of loan in favour of the Defendant and in the event of non-sanction of loan, the transaction stood automatically cancelled and possession of Defendant continued as a tenant.

9) Mr. More would further submit that both the Courts have concurrently recorded findings about existence of landlord-tenant relationship despite execution of Agreement for Sale. That no interference is warranted in such concurrent findings in exercise of revisionary jurisdiction of this Court under Section 115 of the Code of

² (2019) 4 SCC 153

Civil Procedure, 1908. He would pray for dismissal of the Revision Application.

10) Rival contentions of the parties now fall for my consideration.

11) The only issue urged by Mr. Avhad in support of the challenge to the concurrent findings recorded by the Trial and Appellate Court is that the landlord-tenant relationship came to an end upon execution of Agreement for Sale dated 21 September 2004. It is contended on behalf of the Applicant/Defendant that upon execution of the Agreement for Sale, the possession of the suit premises no longer continued in capacity as tenant and that the tenancy has come to an end. It is suggested that possession of the suit premises by the Defendant continued as a prospective purchaser under Section 53-A of the Transfer of Property Act.

12) In support of the contention of tenancy coming to an end with execution of Agreement for Sale, Mr. Avhad has strenuously relied upon judgment of the Hon'ble Apex Court in ***R. Kanthimathi*** in which the issue framed for consideration is captured in para-1 of the judgment as under :

1. Heard learned counsel for the parties. The question raised in this appeal is an interesting question and of some importance. The question is: "Whether on the execution of agreement to sell, by the landlord with the tenant and landlord having received substantial portion of the sale consideration, the relationship of landlord-tenant inter se between them ceases and fresh rights and obligations flows under this agreement?"

13) The Apex Court has answered the issue by holding in paras-4 and 5 of the judgment in ***R. Kanthimathi*** as under:

4. The question for consideration is, whether the status of tenant as such changes on the execution of an Agreement of Sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the Agreement of Sale record the following:

“I, the aforesaid, Mrs Beatrice Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs R. Kanthimathi, wife of Mr S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs. 25,000.

I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the registration authority, accepting and acknowledge payment of the balance of consideration of Rs. 5000 (Rupees five thousand only) at the time of registration *and shall complete the transaction of sale and conveyance as the property demised has already been surrendered to your possession.*”

5. Submission for the tenant is after entering into the agreement, the landlady accepted Rs. 20,000 **confirming delivery of possession in this context which already constitutes the clear intent of the landlady of entering into a new relationship with the tenant under it.** On the other hand, learned counsel for the respondent submits that the words “already been surrendered” therein, only refer to the existing possession of the tenant and nothing more. So far as this submission for the respondent is concerned we have no hesitation to reject the same. The reference of the words “already been surrendered” has been incorporated with consciousness. This is to be construed in the background of the landlady having received a major amount of sale consideration and as normally, if a substantial sum is received by the seller, the purchaser is put in possession of the property hence to fall in the same lines the said words were used to confirm this possession in this context. There could be no other reason to record therein as such. Even if it be said to refer to the possession as a tenant the reassertion in the agreement of sale is only for the purpose of denoting possession given in pursuance of this agreement of sale.

(emphasis and underlining added)

14) However, the judgment in *R. Kanthimathi* is rendered in peculiar facts, where out of agreed consideration of Rs. 25000, amount of Rs. 20,000 was already paid and the possession was accordingly transferred with intention of bringing to an end the tenancy. Also, the Agreement specifically recorded that ‘*the property demised has already been surrendered in your possession*’. In the light of such factual situation, the Hon’ble Apex Court construed the expression ‘*already been surrendered*’ used in the Agreement to mean that the purchaser was put

in possession of the property upon receipt of major amount of sale consideration and that therefore the possession was required to be construed as the one given in pursuance of the Agreement for Sale. The judgment is clearly distinguishable in the facts of the case where out of consideration of Rs. 1,90,000, only an amount of Rs. 40,000 was paid and there is nothing on record to infer that the landlady has surrendered possession with intention of bringing the tenancy to an end. The judgment of the Apex Court in ***R. Kanthimathi*** cannot be cited in support of an abstract proposition that in every case where Agreement for Sale is executed, the landlord-tenant relationship comes to an end. A judgment is an authority for what it decides and not what can be logically deduced therefrom. [SEE: ***Commissioner of Customs (Fort) vs. Toyota Kirloskar Motor (P) Ltd.***³, ***Secunderabad Club v. CIT***⁴]. I am therefore unable to apply the ratio of the judgment in ***R. Kanthimathi*** to the facts of the present case where there was no intention between the parties to bring the landlord-tenant relationship to an end by execution of the Agreement for Sale.

15) Also, the judgment in ***R. Kanthimathi*** has been subsequently explained by the Apex Court in ***H.K. Sharma*** (supra) in which similar issue was framed for consideration in para-22 of the judgment, which reads thus :

22. The question, which arises for consideration in these appeals, is when the lessor and the lessee enters into an agreement for sale/purchase of the tenanted premises where the lessor agrees to sell the tenanted premises to his lessee for consideration on certain conditions, whether, as a result of entering into such agreement, the jural relationship of lessor and the lessee in relation to the leased property comes to an end and, if so, whether it results in determination of the lease.

³ (2007) 5 SCC 371

⁴ 2023 SCC Online SC 1004

16) The Apex Court has answered the issue by holding in para 30 to 33 of the judgment in *H.K. Sharma* as under:

30. A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (e) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act.

31. It is for this reason, the law laid down by this Court in *R. Kanthimathi* [*R. Kanthimathi v. Beatrice Xavier*, (2000) 9 SCC 339] has no application to the facts of this case and is, therefore, distinguishable on facts. Indeed, it will be clear from mere perusal of para 4 of the said decision quoted hereinbelow: (SCC p. 341)

“4. As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale record the following:

‘I the aforesaid Mrs Beatrice Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs R. Kanthimathi wife of Mr S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs 25,000.

I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs 5000 (Rupees five thousand only) at the time of registration *and shall complete the transaction of sale and conveyance as the property demised has already been surrendered to your possession.*”

(emphasis in original)

The words highlighted in italics of the agreement were construed by their Lordships for holding that these italicised words in the agreement clearly indicate that the parties had really intended to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of the landlord and tenant.

32. As observed supra, such is not the case here because we do not find any such clause or a clause akin thereto in the agreement dated 13-5-1993 and nor we find that the existing conditions in the agreement discern the intention of the parties to surrender the tenancy agreement either expressly or impliedly.

33. In the light of the foregoing discussion, we are of the considered opinion that the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of the TP Act due to execution of the agreement dated 13-5-1993 between the parties for sale of the suit house and the same remained unaffected notwithstanding execution of the agreement dated 13-5-1993

(emphasis added)

17) Thus, in ***H.K. Sharma***, the Apex Court has explained and distinguished the judgment in ***R. Kanthimathi*** by holding that the Agreement in ***R. Kanthimathi*** clearly indicated that the parties had intended to surrender their tenancy rights on execution of the agreement for sale and that the same was done to bring to an end their jural relationship as landlord and tenant. However, in the Agreement dated 13 May 1993 involved in ***H.K. Sharma***, there was no such stipulation, and the Supreme Court did not discern the intention of the parties to surrender the tenancy agreement either expressly or impliedly. In the present case also, the Agreement for Sale does not create any impression that the parties intended to bring to an end their jural relationship as landlord-tenant. Defendant did not express intention to surrender the tenancy and acquire possession as purchaser of the property. In my view therefore, the ratio of the judgment of the Apex Court in ***H.K. Sharma*** appears to be closer at home than the ratio of the judgment in ***R. Kantimathi***.

18) Also, the judgments ***H.K. Sharma*** and ***R. Kantimathi*** are rendered in the context of execution of Agreements for Sale before amendment of Section 17 of the Registration Act. Section 17 of the Act has been amended w.e.f. 24 September 2001 by introduction of sub-section (1A) therein. Sub-section (1A) of Section 17 of the Registration Act provides thus:

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

19) Thus, if the Agreement for Sale executed after introduction of Section 17(1A) is not registered, the same cannot be considered for the purpose of application of Section 53A of the Transfer of Property Act. In the present case, Agreement for Sale is executed on 21 September 2004 i.e., after introduction of Section 17(1A) and the same is not a registered instrument. In that view of the matter, Defendant cannot claim the benefit of possession towards part performance under Section 53A of the Transfer of Property Act.

20) Thus, both on the grounds of the ratio of the judgment in *H.K. Sharma* as well as application of provisions of Section 17(1A) of the Registration Act, the jural relationship of landlord and tenant continued even after execution of Agreement for Sale dated 21 September 2004. I am therefore not inclined to interfere in the concurrent findings recorded by the Trial and the Appellate Court on the issue of existence of landlord-tenant relationship.

21) So far as the eviction on the grounds of *bona fide* requirement and change of user is concerned, Mr. Avhad has not canvassed any submissions before me. Perusal of the Memo of Revision Application also indicates that no specific grounds are raised questioning concurrent findings on the issues of *bona fide* requirement and change of user.

22) Considering the overall conspectus of the case, I am unable to trace any jurisdictional error in the concurrent findings recorded by the Trial and the Appellate Courts. Revision Application is devoid of merits. It is accordingly **dismissed**. However, considering the facts and circumstances of the case, there shall be no order as to costs.

[SANDEEP V. MARNE, J.]

23) After pronouncement of the judgment, the learned counsel appearing for the Applicant seeks continuation of interim stay of 4 weeks. The request is opposed by the learned counsel appearing for the Respondent. Considering the nature of observations made in the judgment, the request for continuation of stay is accordingly rejected.

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[SANDEEP V. MARNE, J.]