IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 20 OF 2026

Smt. Sonibai Hari Bhawar **.....APPLICANT**

: VERSUS :

Smt. Sonabai Jaywant Ahire (since deceased) **....RESPONDENTS**
Mr. Ravindra Jaywant Ahire and another

Mr. Govind B. Solanke, for the Applicant.

Mr. Abhishek Ingale i/b. Mr. C.M. Lokesh for the Respondents.

CORAM : SANDEEP V. MARNE, J.

JUDG.RESD. ON: 18 April 2026.

JUDG. PRON. ON: 28 April 2026.

JUDGMENT:

1) The Applicant has filed the present Revision Application challenging the judgment and decree dated 30 October 2025 passed by the Appellate Bench of the Small Causes Court in Appeal No. 127 of 2012, by which the Appeal has been allowed by setting aside the judgment and decree dated 30 August 2012 passed by Small Causes Court in R.A.E. & R. Suit No. 688/1161 of 2000. The Appellate Court has decreed the Suit on the ground of illegal subletting and default in payment of rent and has directed the Applicant/Defendant to handover possession of the suit premises to the Plaintiff.

2) The original Plaintiff-Smt. Sonabai Jaywant Ahire claimed ownership in respect of the property known as 'Sonabai Jaywant Ahire Chawl' situated at Ward-N, 8093, 20 Kirol Village, Vidyavihar (West), Mumbai-400 086. Defendant No.1 was inducted as monthly tenant in respect of Room No.2 in the said property on monthly rent of Rs.50/-. This is how Room No.2 in Sonabai Jaywant Ahire Chawl became the '**suit premises**' in the suit instituted by the Plaintiff. According to the Plaintiff, Defendant No.1 had illegally sublet to Defendant No.2 the suit premises. Plaintiff also alleged default in payment of rent from January 1989. Plaintiff accordingly instituted R.A.E. & R. Suit No. 688/1161 of 2000 in the Court of Small Causes at Mumbai seeking recovery of possession of the suit premises on the grounds of default in payment of rent and unlawful subletting. Defendant No.1. appeared in the suit and filed her written statement questioning the title of the Plaintiff in respect of the suit premises. She contended that one Mukund Valku Rokade was the owner of the suit property. That Defendant No.1 along with her husband and children were staying in the suit premises for 40 long years and were paying Municipal Assessment and looking after the house as its owner. That after the death of Mukund Walku Rokade, his wife-Laxmibai executed documents dated 28 July 1987 renouncing her rights in respect of the Chawl and after her death on 9 April 1988, Defendant No.1 has been enjoying the suit premises as the owner. That Laxmibai was the cousin sister of Defendant No.1. Defendants thus questioned the capacity of the Plaintiff as the landlady in respect of the suit premises. Based on pleadings, the Trial Court framed issues relating to Plaintiff's status as 'landlady', default in payment of rent, unlawful subletting and disclaimer of title of Plaintiff by Defendant No.1. The parties led evidence in support of their respective claims. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to dismiss the suit

by holding that Plaintiff has failed to prove her title in respect of the suit premises and that existence of landlord-tenant relationship between the Plaintiff and Defendant No.1 was not proved.

3) Plaintiff filed Appeal No. 127 of 2012 before the Appellate Bench of the Small Causes Court. However, since Defendants did not appear before the Appellate Court, the Appeal proceeded *ex-parte*. By judgment and order dated 3 August 2017, the Appellate Court allowed the Appeal and set aside the decree of the Trial Court and partly decreed the suit by upholding the status of Plaintiff as landlady in respect of the suit premises. Defendants were directed to handover possession of the suit premises to the Plaintiff.

4) Defendant No.1 filed MARJI Application No.4 of 2019 for setting aside the *ex-parte* decree passed by the Appellate Court. The delay of 144 days in filing MARJI Application was condoned by the Appellate Bench on 6 March 2019. However, MARJI Application No. 118 of 2019 was dismissed by the Appellate Court by order dated 21 December 2019 and the *ex-parte* order passed by the Appellate Court was not recalled. Defendant No.1 filed Civil Revision Application No. 383 of 2022 in this Court challenging the order rejecting the MARJI Application. By order dated 3 March 2025, this Court allowed the Civil Revision Application by setting aside the Appellate Court's order dated 21 December 2019. This Court set aside the *ex-parte* decree passed by the Appellate Court and restored the Appeal for being decided afresh by the Appellate Bench. Accordingly, the Appellate Bench reheard the appeal preferred by Defendant No.1. and by judgment and decree dated 30 October 2025, the Appellate Bench has allowed the Appeal by setting aside Trial Court's decree dated 30 August 2012. The Appellate Court has decreed the suit by directing the Defendants to handover possession of the suit premises to the

Plaintiff. The heir of Defendant No.1 is aggrieved by the eviction decree passed by the Appellate Court and has accordingly filed the present Revision Application.

5) Mr. Solanke, the learned Counsel appearing for the Revision Applicant submits that the Appellate Court has erroneously reversed the finding of the Trial Court about Plaintiff not being the owner of the suit premises. He submits that the Plaintiff has thoroughly failed to prove ownership in respect of the suit premises. That for seeking eviction of a tenant, it is necessary to establish ownership of the suit premises and existence of landlord-tenant relationship between the parties. That there is absolutely no evidence on record to infer existence of landlord-tenant relationship between the parties. Plaintiff has failed to produce even a single document of title. That the Appellate Court has ignored the admission given by the Plaintiff that he had no documentary evidence to show that Defendant No.1 is or was the tenant. That till the year 2004, Applicant's grandmother (Defendant No.1) was paying all municipal taxes in her own name. That in absence of establishment of landlord-tenant relationship, the suit could not have been entertained. He submits that the Appellate Court has ignored these vital aspects and erroneously reversed the decree passed by the Trial Court.

6) The Revision Application is opposed by Mr. Ingale, the learned Counsel appearing for Respondent No.1-Plaintiff. He submits that the Appellate Court has correctly appreciated the entire evidence on record for the purpose of reversing erroneous decree passed by the Trial Court. He submits that the Appellate Court has twice upheld eviction of the Applicant. That in an eviction suit, it is not necessary for the landlord to prove title in respect of the property to the satisfaction of the tenant. He relies on judgment of this Court

in ***Ramesh Anandrao Shirke (since decd.) through Kusum Ramesh Shirke & Ors. Versus. Kashinath Anna Jaigude,***[1] in which it is held that in an eviction suit filed by the landlord against a tenant under the rent laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what is required to be proved in a title suit. That even *prima-facie* production of proof of ownership is sufficient. That Plaintiff has sufficiently proved having acquired ownership of the suit premises by way of inheritance from Mukund Walku Rokade and Laxmibai. That there is voluminous evidence in the form of Sanad, Property Card showing ownership of the Property CTS No.318 and 318/1 on which suit premises are constructed. That Defendant No.1 has failed to produce any credible evidence to dislodge Plaintiff's claim. That Defendant No.1 did not enter the witness box nor produced any proof of alleged ownership or lawful possession. That Defendants also failed to prove the capacity in which they occupied the suit premises. He therefore submits that no interference is warranted in well considered decision of the Appellate Bench. He prays for dismissal of the Revision Application.

7) I have considered the submissions canvassed on behalf of the rival parties. I have gone through the findings recorded by the Trial and the Appellate Courts in their respective judgments. I have also perused the records of the case filed along with the Revision Application.

8) For entertainment of suit for eviction under the rent laws by invoking jurisdiction of Small Causes Court, it is incumbent for the Plaintiff to prove landlord-tenant relationship. In the present case, though Plaintiff claimed ownership in respect of the structure in which the suit premises are located, Defendant No.1 clearly denied title of the Plaintiff. Ordinarily, Defendant-tenant questioning the title of the landlord incurs eviction action

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under Section 116 of the Indian Evidence Act, 1872 **(Evidence Act)**. However, that principle applies only when landlord-tenant relationship exists**.** The principle is premised on the factor that a tenant cannot seek an entry into the tenanted premises by accepting title of the Plaintiff and thereafter question the same when it comes to his/her eviction. This is how estoppel under Section 116 of the Evidence Act applies. However, the estoppel applies only when Plaintiff is in a position to prove that Defendant was inducted as a tenant in respect of the suit premises. Thus, existence of landlord-tenant relationship is *sine qua non* for applying the principle of estoppel. Even if the issue of application of estoppel under Section 116 of the Evidence Act is to be momentarily ignored, for maintaining a valid suit for eviction under the rent laws, Plaintiff must be in a position to prove existence of landlord-tenant relationship.

9) On perusal of the pleadings, the Trial Court has framed specific issue out of existence of landlord-tenant relationship being Issue No.1A, which reads thus:

> 1A. Does plaintiff prove that there was relationship of landlord and tenant between original plaintiff and defendant No. 1?

10) Additionally, Issue No.1 was framed by the Trial Court as under:

> 1. Does the plaintiff prove that she is landlady of suit premises ?

11) The Trial Court answered both Issue Nos.1 and 1A in the negative. In my view, the answer to Issue No.1A is of paramount importance over answer to Issue No.1. Mr. Ingale is not entirely wrong in contending that in an eviction suit, enquiry into title of the Plaintiff over tenanted premises cannot be the same as based in a title suit. The landlord need not satisfy his title to the tenanted property to the satisfaction of the tenant. In this regard, reliance by

Mr. Ingale on my judgment in ***Ramesh Anandrao Shirke*** is apposite in which this Court has referred to the judgment of the Apex Court in ***Appollo Zipper (India) Ltd. Versus W. Newman and Co. Ltd.***[2] and has held in paras-24 and 25 as under:

> 24. However, in para 16 of the judgment, the Apex Court has quoted a passage from its judgment in Apollo Zipper (India) Ltd. v. W. Newman and Co. Ltd., (2018) 6 SCC 744: 2018 Mh. L.J. Online (S.C.) 51 and has held as under:
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> > "16. The plaintiffs' argument on law is that in an eviction suit, title need not be proved in a manner required in a suit for declaration of title. On this count, the following passage from Apollow Zipper has been cited: (SCC p. 754, para 40)
> > "40.- It is a settled principle of law laid down by this Court that in an eviction suit filed by the landlord against the tenant under the rent laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit."
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> Two earlier authorities, Sheela v. Firm Prahlad Rai Prem Prakash and Boorugu Mahadev and Sons v. Sirigiri Narasing Rao broadly lay down the same principle of law. It is not the law that in a landlord-tenant suit the landlord cannot be called upon at all to prove his ownership of a premises, but onus is not on him to establish perfect title of the suit property."
>
> (emphasis supplied)
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> 25. Thus even in a Suit for recovery of possession from a tenant, the extent of inquiry into title of landlord cannot be on par with a inquiry between competing claims of two persons claiming ownership. In the present case, the plaintiff is not even a tenant in respect of the suit property, and he is merely a gratuitous licensee/permissive user. In my view therefore the trial Court was not expected to institute a detailed enquiry into the title of defendant while deciding the suit for recovery of possession from plaintiff. Plaintiff has lost in his claim of tenancy. He does not claim ownership of the suit property. He does not have a legal authority to defeat a decree for possession. Defendant on the other hand is armed with a Sale Deed in his name. Plaintiff questioned acquisition of title by defendant through the Sale Deed. The Appellate Court, though did not hold defendant to be the owner, upheld his claim of being a mortgagee. Thus to some extent, interest in the property is established by defendant as against absence of legal authority of plaintiff to continue in possession. His long-settled possession may entitle him to the limited relief against dispossession by use of force. This is the reason why defendant filed suit for recovery of possession by lawful means. In a litigation of this nature, in

2 2018 6 SCC 744

my view, the extent of inquiry into the title of defendant and his right to seek recovery of possession need not be extensive.

12) However, in the present case, though Plaintiff did not have a duty to establish her title over the tenanted premises to the satisfaction of Defendant No.1-tenant, she had the duty to establish existence of landlord-tenant relationship. Admittedly, there is no rent agreement executed between the Plaintiff and Defendant No.1. In absence of a rent agreement, atleast proof of payment of rent ought to have been produced by the Plaintiff since existence of landlord-tenant relationship was denied. In the plaint, there is no positive statement that Defendant No.1 ever paid rent in respect of the suit premises to the Plaintiff beyond making a stray statement in para-1 of the Plaint that '*Defendant No.1 was the monthly tenant of the Plaintiff prior to termination of her tenancy at the monthly rent of Rs.50/- per month*'. There is absolutely no averment that Defendant No.1 ever paid rent to the Plaintiff. In para-2 of the plaint, further vague statement is made that Defendant No.1 was not ready and willing to pay rent in respect of the suit premises and was in arrears thereof since January 1989. In absence of any pleadings in the plaint about Defendant No.1 paying any rent and Plaintiff issuing any rent receipts, Plaintiff ought to have atleast led some positive evidence of payment of rent. However, far from producing any evidence of payment of any rent by Defendant No.1, Plaintiff's witness gave specific admission during the course of his cross-examination that '*it is true to say that I do not have a documentary evidence to show that Sonibai Bhawar (defendant no.1) is our tenant in respect of the suit premises*'. Thus, the Plaintiff specifically admitted absence of any evidence of creation of tenancy between Plaintiff and Defendant No.1. There is thus no iota of evidence to establish creation of landlord-tenant relationship between Plaintiff and Defendant No.1.

13) On the other hand, Plaintiff's witness also gave admission that '*prior to the assessment bill were transferred in the name of my mother, the assessment bill was in the name of Sonibai Bhanwar (defendant no.1)*'. The Trial Court has wondered as to how municipal assessment can be made in the name of Defendant No.1 if she was a mere tenant. Be that as it may. It is not necessary to delve into that aspect any deeper. Suffice it to hold that there is zero evidence available on record to infer existence of landlord-tenant relationship between the parties. The Trial Court had rightly answered Issue No. 1A in favour of Defendant No.1 and against the Plaintiff.

14) After remand of the Appeal, the Appellate Court framed common Point No.1 for determining issues relating to Plaintiff's ownership to the suit premises and her capacity as landlady. While answering Point No.1, the Appellate Court concentrated only on Plaintiff's ownership in respect of the property and the suit premises. The Appellate Court considered rival documents and has arrived at a finding that Plaintiff was able to prove her ownership in respect of the property through inheritance from Mukund Rokade and Laxmibai whereas Defendant No.1 was not able to dislodge the same. However, no enquiry is conducted into existence of landlord-tenant relationship by the Appellate Court. The Appellate Court has failed to appreciate that even if issue relating to ownership went in favour of the Plaintiff same does not automatically make Defendant No.1 as tenant of the Plaintiff. The Appellate Court has rendered an unacceptable finding that because Defendant No.1 admitted possession of the suit premises in the lifetime of Mukund Rokade and Laxmibai, tenancy rights of Defendant No.1 got established upon inheritance of the property by the Plaintiff. The Appellate Court has recorded following findings in para-45 of the judgment:

> 45. It is also pertinent to note that defendant no.1 herself, in her written statement, admitted that she was in possession of the suit premises since the lifetime of Mukund Rokde and Laxmibai. Once it is established that Mukund Rokde and Laxmibai were the owners of the suit property and that the plaintiff succeeded them by inheritance, the tenancy rights of defendant no.1, if any, would automatically be governed under the plaintiff's ownership. Thus, the relationship of landlord and tenant between the plaintiff and defendant no.1 stands duly proved.

15) However, the Appellate Court failed to appreciate that Defendant No.1 never paid any rent to Mukund Rokade or Laxmibai. It was her defence that she was cousin of Laxmibai and was treated as daughter by Laxmibai and this is how she always looked after the Chawl as owner. May be Defendant No.1 was not successful in proving her ownership over the property and the suit premises. However, that would not automatically convert Defendant No.1 into a tenant of either Mukund Rokade/Laxmibai or Plaintiff. For establishing landlord-tenant relationship between Plaintiff and Defendant No.1, production of some rent receipts and issuance of rent receipts was necessary. Even if Plaintiff was successful in proving her ownership in respect of the property in the suit premises, that would make Defendant No.1 unlawful occupier but not tenant. Thus, the finding recorded by the Appellate Court on establishment of landlord-tenant relationship is clearly perverse and is liable to be set aside. The Appellate Court has committed jurisdictional error in mixing the issue of ownership and landlord-tenant relationship. Exercise of jurisdiction by the Appellate Court is with material irregularity as no enquiry is conducted by the Appellate Court about payment of rent. The Appellate Court has not even taken into consideration the admission recorded in para-16 of Trial Court's judgment by Plaintiff about absence of documentary proof of induction of Defendant No.1 as a tenant.

16) In my view, therefore landlord-tenant relationship between the Plaintiff and Defendant No.1 is not established. Since Defendant No.1 cannot be held to be the tenant of the Plaintiff, the ground of default in payment of rent or unlawful subletting could not have been held to be proved. In fact, the Small Causes Court did not have jurisdiction to entertain the suit in absence of establishment of landlord-tenant relationship. The Appellate Court has failed to appreciate this position and has erroneously reversed the order of the Trial Court. In my view therefore a perfect case is made out for exercise of jurisdiction under Section 115 of the Code of Civil Procedure,1908 for setting aside the order of the Appellate Court. The impugned judgment and order of the Appellate Court is thus indefensible and liable to be set aside.

17) I accordingly proceed to pass following order:

i. Revision Application accordingly succeeds. Judgment and order dated 30 October 2025 passed by the Appellate Bench of the Small Causes Court in Appeal No. 127 of 2012 is set aside and the judgment and decree dated 30 August 2012 passed by the Trial Court in R.A.E.& R. Suit No. 688/1161 of 2000 is upheld.

ii. Civil Revision Application is **allowed** in the above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]