

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 CIVIL APPELLATE JURISDICTION
 CIVIL REVISION APPLICATION NO.17 OF 2014
 ALONGWITH
 INTERIM APPLICATION NO.7537 OF 2025
 IN
 CIVIL REVISION APPLICATION NO.17 OF 2014

1. Noor Abdul Kadar Baig, (Deceased deleted)]
 2. Munawar Abdul Kadar Baig]
 House No.139T, Juhu Tara,]
 Santacruz (West), Mumbai – 400 049.] Applicant
 [Original Plaintiffs]

VERSUS

1. Smt. Jainibai Najamuddin, (Deceased deleted)]
 2. Smt. Mumtaz Shahanwaz,]
 (since deceased through Legal Heirs)] Respondents
 [Orig. Defendants]
 2(A). Shahnawaz Sakharwala (Deceased deleted)]
 2(B). Zohra Halala]
 Age: 34 years, Occ.]
 residing at Cluster 39,]
 Villa No.15, Junera Islands]
 Dubai UAE.]
 2(C) Jumana Kapadia]
 Age 31 years, Occ.]
 residing at : Barford,]
 Hadley Green, Barney]
 London 4PP5NP] Respondents

Mr. Kunal Bhanage a/w Mr. Vasim Siddiqui a/w Ms. Priyanka Acharya
 i/b Mr. Akshay Pawar, for the Applicat.

Mr. Shanay Shah a/w Mr. Kuber Wagle i/b Mr. Purazar Fouzdar, for
 Respondent Nos.2(A) to 2 (C).

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CORAM : M.M. SATHAYE, J.
RESERVED ON : 21.11.2025
PRONOUNCED ON : 10.03.2026.
(Through V.C.)

JUDGMENT :

1. By this Civil Revision Application, filed under section 115 of the Code of Civil Procedure, 1908 ('CPC' for short), the Revision-Applicant/original Plaintiff No.2 is challenging the the Judgment and Decree dated 11.10.2013 passed in A-1 Appeal No.79/2011 alongwith Cross Objection No.2/2012 by the Appellate Bench of Small Causes Court at Mumbai (Bandra). By the said impugned Judgment and Decree, the Appeal filed by the Defendants/Tenants challenging the decree of eviction was allowed and the Cross Objection filed by the Landlord challenging adverse findings, was rejected and the Judgment and Decree passed by Small Causes Court, Mumbai in R.A.E Suit No.400/1222 of 1985 (granting eviction) was set aside and the said suit was dismissed with costs.

2. The Revision-Applicant is original Plaintiff-Landlord and Respondents are legal heirs of original Defendants-Tenants.

3. Few facts shorn of unnecessary details are as under :

3.1. The Plaintiff-Landlord filed the said suit seeking eviction of the Defendants-Tenants from the suit flat which is Flat No.5, Second Floor, House No.139-T, Juhu Tara, Santacruz (West), Mumbai 400 049 which was let out on monthly rent of about Rs.520/- per month. The said suit was filed under the provisions of the Bombay Rents, Hotel and Lodgings House Rates Control Act, 1947 ('Bombay Rent Act' for short) on the grounds of *bona fide* requirement, nuisance and

annoyance, tenant committing acts contrary to the provisions of section 108 (o) of the Transfer of Property Act, 1882 and erection of permanent structure, acquisition of suitable residence, non-user and unlawful sub-letting i.e under section 13 (1) (a), 13 (1) (b), 13 (1) (c), 13 (1) (e), 13 (1) (g), 13 (1) (k), 13 (1) (l) of Bombay Rent Act.

3.2. Plaintiff No.2-Landlord examined himself as P.W.1. The Plaintiffs examined their Architect as P.W.2, Court Commissioner as P.W.3, an employee working in the Office of Assistant Commissioner of Police and Public Information Officer as P.W.4 and Officer of Santacruz Police Station as P.W.5. The Defendants-tenants examined D.W.1 - son of Defendant No.1 as her Constituted Attorney. They also examined their Chartered Structural Engineer as D.W.2 and Assistant Manager working in Reliance Infrastructure as D.W.3.

3.3. The learned Trial Judge, on appreciation of evidence found that the grounds of *bona-fide* requirement, non-user and unlawful sub-letting were not proved by the landlord. However, the learned Trial Judge found that the grounds of nuisance and annoyance, tenant committing acts contrary to the provisions of section 108 (o) of the Transfer of Property Act and acquisition of suitable alternate residence are proved by the landlords. Therefore, the suit was decreed directing the Respondents to vacate the suit premises. The Defendants-Tenants filed the said Appeal in which the Plaintiff-Landlord filed Cross Objection, challenging adverse findings given by the Trial Court.

3.4. The Appellate Bench of the Small Causes Court, on re-appreciation of evidence, confirmed the findings about *bona fide* requirement, non-user and unlawful sub-letting. However, the Appellate Bench reversed finding of the Trial Court on the grounds of nuisance and annoyance, additions and alterations of permanent nature and acquisition of suitable residence and therefore decree of eviction was set aside thereby dismissing the suit entirely.

3.5. In these circumstances, the Plaintiff-Landlord filed the present Revision Application. During pendency of the Revision Application, legal heirs of Respondent No.2 were brought on record.

4. Affidavit-in-reply has been filed on behalf of Respondent No.2(B) and 2(C) opposing the Civil Revision Application.

SUBMISSIONS

5. Learned counsel Mr. Bhanage appearing for the Revision-Applicant-Landlord submitted as under.

5.1. That the Appellate Court was not justified in reversing the grounds of nuisance and annoyance, additions and alterations of permanent nature as well as acquisition of suitable residence. That though additions and alterations of permanent nature are acknowledged by the Appellate Court in the course of the judgment, the aspect of beneficial enjoyment is stretched to such an extent that the said ground is almost made impossible for the Landlord to prove.

5.2. Inviting the Court's attention to oral evidence of various witnesses, it is submitted that the Defendants-Tenants have made changes in the suit flat to the extent of changing location of the kitchen, constructing a WC in balcony and removing internal wall. Kitchen was shifted and new bedroom was created. That such large scale alteration in suit-flat cannot be held as necessary for beneficial enjoyment. That these alterations are admittedly done without permission of the Landlord or the local Municipal Corporation.

5.3. He further submitted that flat purchased by husband of Defendant No.1 at Pune amounts to acquisition of suitable residence by the tenant and therefore, eviction decree on that ground also must follow. That evidence on record indicates that Defendant No.1 was staying in Pune as of right in the premises of her husband which is clearly established by her name appearing in Pune Municipal Corporation's voters list of 1992. That Defendant No.1 did not stay in the suit premises for twenty years and was staying at Pune. That on her visit to Mumbai, she stayed with her other son-Salim at a different premises.

5.4. That the tenants are keeping potted plants on the parapet on the western side of the suit-flat and due to its constant watering, there is serious seepage on the first floor. Also the tenant has constructed, an elevated concrete strip at the entrance of the suit building without permission of the landlord which results into accumulation of rain water at the entry creating unhygienic and slippery hazard for elderly people and, therefore, eviction decree on the ground of nuisance and annoyance also must follow.

5.5. That though jurisdiction under section 115 of the CPC is limited, High Court can certainly interfere in case the impugned judgment is found to be based on misreading of evidence or ignoring the evidence and there is legal infirmity resulting into perverse finding. That in any case, admitted alterations and additions carried out by the Defendants - Tenants could not have been ignored by the Appellate Court.

5.6. That reason given by the Appellate Court that additions and alterations or concrete pathway at the entry of the building can be removed / reversed, can not be ground to permit the tenant to do it.

5.7. Learned counsel for the Revision-Applicant relied on many judgments/case-laws including the following in support of his case:

- (i) Neelakantan And Others Vs. Mallika Begum [(2002) 2 SCC 440];
- (ii) S.F. Engineer Vs. Metal Box India Limited and another [(2014) 6 SCC 780];
- (iii) Najama Gulab Bagwan and others Vs. Laxmibai Rangildas Gujar (since deceased by her heirs and Lrs) Vinodkumar Rangildas Gujar and others [2006(1) Mh.L.J., 273];
- (iv) Ramrao Balaji Kothare and others Vs. Lila, widow of Dr. Y. Narayan Ajinkya and others [1998 Bom. R. C. 299];
- (v) Manorama Gopal Langde Vs. Somnath Dagdu Rane [2006 (1) Bom. C.R. 458];
- (vi) Jinadas Dhondiappa Mangalwedhekar Vs. Shamrao Baburao Kale [2009 (1) RCR 233];
- (vii) Hasmukhlal Raichand Shah Vs. Arvindbhai Mohanlal Kapadia [1988 (XXIX-2) Gujarat Law Reporter 1442.];
- (viii) B. R. Mehta Vs. Atma Devi And Others [(1987) 4 SCC 183];

6. On the other hand, Mr. Shah, learned counsel appearing for the Respondents-Tenants submitted as under.

6.1. That the plan produced by the Landlord is subsequent plan of third floor onwards and, therefore, it is of no consequence because the suit flat is situated on the second floor and, therefore, it was incumbent upon the landlord to establish the original position of suit flat, to contend that there has been permanent additions and alterations. He further submitted that burden lies on the landlord to show existence of original structure. That unless the nature and form of the suit-flat is changed, the ground of permanent structure cannot be held as proved.

6.2. That the WC in the balcony already existed and the said WC does not put any load on the structure. That the said WC is in existence since beginning and, therefore, there is no permanent alteration by the tenants.

6.3. That swapping of kitchen and bedroom was for beneficial enjoyment of the suit-flat.

6.4. That the first Court Commissioner Mr. Deshpande who visited the suit flat has not entered witness box and therefore his report cannot be considered by the Court. That the second Court Commissioner Mr. Doshi though examined, his evidence can not be considered because he was not appointed for that purpose.

6.5. That in revisional jurisdiction under section 115 of CPC, re-appreciation of evidence is not permitted. That Civil Revision

Application cannot be treated as Appeal. That the finding of the Appellate Court and view taken is plausible and cannot be called perverse and there is no reason to interfere.

6.6. That accommodation of tenant's husband cannot be held as suitable as it is in other city (Pune). That the heirs of tenant are still residing and occupying the suit flat. He relied on following judgments in support of his case:

- (i) Somnath Krishnaji Gangal vs. Moreshwar Krishnaji Kale and others [1994 SCC OnLine Bom 537];
- (ii) Dunlop India Limited Vs. A. A. Rahna and another [(2011) 5 SCC 778];
- (iii) Man Kaur (dead) By Lrs. Vs. Hartar Singh Sangha [(2010) 10 SCC 512];

7. Mr. Bhanage, learned counsel for the Applicant-Landlord submitted in rejoinder as under.

7.1 That all the fatal admissions given by the Tenants' witnesses about various changes made in the suit-flat cannot be ignored under umbrella of beneficial enjoyment.

7.2. That when husband of Defendant No.1 is residing at a different place, it cannot be considered that the same is not suitable for Defendant No.1.

7.3. That in any case, as on today, both the Defendants are no more and it is the legal heirs of daughter-in-law (Defendant No.2) who are in occupation of the suit-flat.

REASONS AND CONCLUSIONS

8. I have considered the rival submissions and perused the record.

9. At the outset, it is necessary to note that there are concurrent findings on the issue of reasonable and *bona-fide* requirement, hardship, non-user and unlawful sub-letting. Findings on these issues are based on material available on record and the findings are probable findings. Having gone through the reasons stated by the Courts below for refusing decree on these grounds, in my view, there is nothing perverse and no interference is called for, to that extent.

10. However, so far as remaining three grounds of erection of permanent structure, acquisition of suitable residence and nuisance and annoyance, picture is completely different. The reasons given by the Appellate Court to reverse the findings of the Trial Court are far fetched, over-stretched and clearly perverse. Let me demonstrate how.

11. Following facts are emerging from the record viz. the suit is filed in 1985. The ground of addition and alternation of permanent nature was added by way of amendment in 1994. Second floor of suit building where suit flat is situated was built by the landlord sometime between 1964 and 1967. The first Court Commissioner Mr. Deshpande has submitted report dated 14.04.1995 which is not exhibited, however, its xerox copy is available at Exh.76. Subsequent Court Commissioner Mr. Doshi has visited the suit-flat on 18.03.1998 and submitted his report. D.W. 2 – Fakhrudin has visited the suit premises in January, 2011 and has submitted report on 17.01.2011.

Admittedly, D.W.2 is not an Architect and was appointed privately by Defendants-Tenants.

12. Let us first consider the ground of erection of permanent structure read with breach of section 108 (o) of the Transfer of Property Act. The Appellate Court has considered this ground in paragraph No.36 to paragraph No.64 of the impugned Judgment.

13. The Appellate Court at the beginning of its reasoning on this issue has clearly held that non framing of issue about additions and alterations of permanent nature under section 13(1)(b) of the Bombay Rent Act by the Trial Court will not make any difference because parties knew fully well of the case they have to meet and, therefore, no prejudice is caused. In any case, issue of acts contrary to section 108(o) of the Transfer of Property Act was framed by the Trial Court and it's consideration overlaps consideration about permanent structure under section 13(1)(b) of the Bombay Rent Act.

14. The Court has to consider the re-appreciation of evidence at the hands of the Appellate Court, in the teeth of admitted case made out by the Tenants.

15. Now, let us consider the case made out by Defendants-Tenants. D.W.1 Mr. Shahanwaz is son of Tenant – Defendant No.1 and her Constituted Attorney. Case made out by him is reiterated by the Appellate Court in paragraph No.60 to paragraph No.63 of the impugned judgment. The Appellate Court has recorded that according to D.W.1, since inception there existed an Indian style WC in the South East corner of the balcony, however, tenants have put

glass windows in the said rear balcony after coming into the suit flat for better enjoyment. According to D.W.1, since the Defendants needed a bigger kitchen to accommodate modern gadgets, they constructed kitchen platform in bedroom in the year 1988-1989. According to D.W.1, they shifted kitchen at that time to portion of Hall-cum-Dining Room and a few years thereafter in 1997, adjoining bedroom at the rear side was converted into kitchen where kitchen platform was reconstructed and the kitchen platform existing in Hall-cum-Dining Room was dismantled. According to D.W.1, all these changes are reversible, without causing any damage to the structure, and were carried out for beneficial enjoyment of the suit-flat, therefore, do not amount to permanent structure.

16. All the above changes made after taking the suit-flat on rent are stated on oath by the defendants' witness himself. But, the Appellate Court has held that they are reversible in nature and therefore are not amounting to permanent structure and well covered under the umbrella of beneficial enjoyment of suit-flat.

17. The Appellate Court has held that the Landlords have failed to produce the sanctioned plan of construction of the second floor where the suit-flat is situated and, therefore, there is no reference point about how the suit-flat originally was and therefore it cannot be said that there is erection of permanent structure and therefore Landlords have failed to prove the ground of erection of permanent structure.

18. Admittedly, all the additions and alterations made by Defendants-Tenants are carried out without permission of the Landlord or Municipal Corporation after the flat is taken on rent.

19. In my view, when the above changes are admitted by the Tenant, that too without landlord's permission, the fact that original plan of suit-flat was not produced is of no consequence.

20. The Appellate Court has taken support from the evidence of Defendants' Witness No.2 – Mr. Fakhrudin who is Structural Engineer who deposed that he visited the suit-flat and observed that changes carried out in suit-flat are carried without any damage to the structure and can be reversed. This witness has admitted that he is not an Architect but Consulting Engineer. He has admitted that he had not asked plan for construction made in the year 1964 and 1983. He has admitted that Court Commissioner's reports were not shown to him. He has admitted that no notice was given to the Plaintiffs when he inspected the suit-flat.

21. The Appellate Court has discarded the Commissioner's report submitted by Mr. Deshpande on the ground of non examination of said court commissioner. Evidence and report of subsequent Court Commissioner (P.W.3 – Pravin Doshi) is discarded by the Appellate Court on the ground that order under which first Court Commissioner was appointed was passed to ascertain whether any repairs are required and Mr. Deshpande was relieved from commissioner work and replaced by Mr. R.D. Sethi who was also relieved and thereafter Mr. Pravin Doshi was appointed as Court

Commissioner as per original order passed by the Trial Court dated 19.02.1997. The Appellate Court has held that since Mr. Doshi was appointed by way of replacement to original Commissioner, he was not authorized by the Trial Court under order dated 19.02.1997 to report to the Court whether Defendants have carried out additions and alterations of permanent nature. According to Appellate Court, P.W.3 – Pravin Doshi was supposed to report whether any repairs are required in the suit-flat to be carried out as per letter of Defendants.

22. Assuming that the first commissioner's report (Mr. Deshpande) cannot be considered because he was not examined and the original report is not on record and only its xerox copy is available, even then, the second Commissioner's Report is on record duly proved by examining the second Commissioner Mr. Doshi as P.W.3. Mr. Doshi is a proprietor of M/s. Doshi & Co., a firm of Chartered Engineers and Surveyors, Registered Architects. The Appellate Court has adopted hyper-technical approach by holding that under the original order of appointment, he was not supposed to report about additions and alterations. This approach, in my view, is perverse in the teeth of Defendants' witness himself admitting making changes in the nature of removing kitchen platform, wall between rooms, reconstructing kitchen platform twice and converting kitchen into bedroom and bedroom into kitchen. When a specific ground is pressed into service by the landlord about erection of permanent structure and acts contrary to section 108 (o) of the Transfer of Property Act, under section 13 (1) (a) and 13 (1) (b) of the Bombay Rent Act, the Appellate Court could not have brushed aside the second

Commissioner's report for the reason of purpose of appointment of Court Commissioner. In my considered view the Appellate Court has ignored a material piece of evidence amounting to perversity.

23. The Appellate Court was conscious of the fact that P.W.3 – Pravin Doshi in his report has clearly stated that in the opinion of the Court Commissioner, there were major structural changes in the suit-flat by putting Indian style WC with raised flooring and partition wall between hall and kitchen being removed. The Appellate Court has held that the evidence of this witness is shaken in the cross-examination, based on two statements, first about structural change and second about not noticing WC in balcony. These so called admissions, in my view, could not have been held as fatal, to discard the other overwhelming evidence about additions and alterations, including Defendant's own admitted stand about changes.

24. The second Commissioner's report clearly states that additions and alterations of permanent nature are carried out by the tenant. Additions and alterations are admitted by the Defendants' Witness No.1 himself. Therefore, there was no reason not to consider the second Commissioner's report on merits. In that view of the matter, appreciation of evidence about the grounds under section 13(1)(a) and 13(1)(b) of the Bombay Rent Act by the Appellate Court is perverse and cannot be allowed to stand.

25. This is therefore a classic case showcasing how the provisions of Bombay Rent Act can be stretched to afford protection to a tenant who audaciously comes to the Court and admits changing position of

kitchen and bedroom in a tenanted flat and admits demolition and reconstruction of kitchen platform at different places and also admits demolition of internal walls but contends nonchalantly that all these additions and alterations are for beneficial enjoyment of the suit-flat and therefore, should not be held as ground for eviction by the Court. The Appellate Court has gone out of way to reverse the finding of the Trial Court on this ground.

26. So far as construction of WC in the North-East side balcony is concerned, there was evidence before the Court in the form of Court Commissioner PW.3 - Pravin Doshi, who has stated in his evidence that there has been a structural change made in the suit-flat in the balcony of North East side by putting up Indian style WC with raised flooring. Merely because the landlord did not produce the plan of the suit-flat, the Appellate Court has ignored this relevant piece of evidence. The Appellate Court was required to take its cognizance alongwith other overwhelming evidence of additions and alterations of permanent nature.

27. In **Nijma Gulab Bagwan (supra)** the learned Single Judge of this court was considering the ground of erection of permanent structure where it is observed that before any repairs and/or alteration or construction, the tenant must issue written notice and obtain written permission from the landlord and if the tenant on his own unilaterally constructs without written permission of the landlord, such construction would be unauthorized and will definitely fall within the clutches of Section 13(1)(b) of the Bombay Rent Act. In the present case, admittedly, all the changes are made by

the tenant without permission of the landlord and therefore, this Judgment directly supports the Revision-Applicant-Landlord.

28. In **Ramrao Balaji Kothare (Supra)**, the learned Single Judge of this Court was considering the ground of erection of permanent structure and it is observed that converting two rooms in tenanted premises in single Room by removing the wall is definitely an alteration of permanent nature. In the present case, also a internal wall has been removed without permission of the landlord and therefore, this judgment also supports the Revision-Applicant.

29. So far as the case law of **Somnath K. Gangal (supra)** relied upon by the Respondents-Tenants is concerned, applying principles laid down therein, I have considered the mode and degree of annexation and intention of the tenants in making changes narrated above. Having considered the same, I have no hesitation in holding that the additions and alterations are substantial in nature which have altered the form of the suit-flat, and therefore ground of erection of permanent structure is clearly made out.

30. Now, let us consider how the Appellate Court has considered the ground of acquisition of suitable residence by the tenants which is discussed in paragraph Nos.15 to 23. Admittedly, Respondent No.1/Defendant No.1-Jainibai Najamuddin is the original tenant. Admittedly, evidence is led by her son-Shahanwaz Sakarwala, Constituted Attorney of Defendant No.1-Tenant and husband of Defendant No.2-Smt. Mumtaz.

31. In **B. R. Mehta vs. Atma Devi and Ors. (supra)** the Hon'ble Supreme Court was considering the ground of acquisition of suitable residence under Section 14(1) of Delhi Rent Control Act, 1958 which is *pari materia* with Section 13(1)(l) of the Bombay Rent Act, 1947. The Hon'ble Supreme Court while considering whether acquisition of the residence by tenant's wife can be considered as valid ground for eviction has held that where tenant's wife was living separately in Government Residence allotted to her having strained relation with husband, a tenant cannot be evicted. Therefore, whether there are strained relations between husband and wife is a material aspect to be considered. In the present case there is no such evidence. Wife is tenant whose husband has acquired residence, Defendant No.1 can be held to have acquired suitable residence under Section 13(1)(l) of the Bombay Rent Act.

32. Similarly, in **Mrs. Manorama Gopal Landge (supra)**, the learned Single Judge of this court has observed that when alternative accommodation is acquired by tenant's wife and when the relationship of husband and wife is cordial, it is difficult to accept the argument that acquisition of premises by either of the spouse is no ground for eviction. This Judgment clearly supports the Revision Applicants-Landlords.

33. In **Jinadas Dhondiappa Mangalwedhekar (supra)** the learned Single Judge of this Court has held that merely because the newly acquired premises is not sufficient to accommodate the tenant and his dependents cannot be a reason to deprive the landlord from claiming eviction. This court has held that the basic aim and object of

the Bombay Rent Act cannot be overlooked and the Bombay Rent Act was intended to provide shelter to a person or tenant, who has no premises to reside because of shortage of accommodation but having once acquired a suitable residence, tenant's large and developing family cannot be a reason to make the said provision illusory for the landlord, depriving landlord of his right to take back possession. This Court has also observed that the Landlord will never get possession of the suit premises in view of developing or growing family of tenant by passage of time. In the present case, the daughter-in-law of tenant (Defendant No.2) and now her legal heirs are squarely covered by these observations. This Judgment directly supports the Revision Applicant-Landlord. In the facts of the present case, the Respondents-Tenants do not appear to be such tenants who have no shelter due to shortage of accommodation. In the present case, Respondent Nos. 2B and 2C, who are the only legal heirs fighting this litigation are residents of Dubai and London respectively. Therefore they too have acquired suitable residence. The Respondents-Tenants simply want to retain tenanted premises at prime location of Mumbai.

34. In **Hasmukhlal Raichand Shah (Supra)** the learned Single Judge of the Gujarat High Court was considering the same ground under Bombay Rent Act when it is held that if there is evidence on record showing tenant and his family members living together and one of them acquired suitable residence, then acquisition of suitable residence by one of them would be considered for the ground of acquisition of suitable residence. This Judgment also supports the Revision-Applicant – landlord.

35. It has come on record that Defendant No.1 alongwith her husband had been residing in the accommodation at Pune (Initially at Qutbi Co-operative Housing Society (CHS) Limited in Wanorie, Pune and later on at Brahma Angan, Kondhwa, Pune) and the Plaintiff-Landlord has produced attested copy of Municipal Election Roll of 1992 'Exh.65' showing name of Defendant No.1 as resident of Pune. The landlord has also produced attested copies of BSNL Pune, reply to RTI Application in respect of telephone number and telephone directory as well as telephone bills to show that telephone connection was transferred from Qutbi CHS to Brahma Angan. The Appellate Court was conscious of the fact that the Municipal Election Roll of 1992 at 'Exh.65' shows names of Defendant No.1 and her husband in the voters list at Pune. The Appellate Court pitched this evidence against the evidence produced by Defendant No.1-Tenant in the form of Identity Card by Election Commission in November, 1994 at the address of the suit-flat and Identity Card issued by Election Commission in October, 2006 at the address of the suit-flat. This evidence, in my considered view, at the most reflects residence of the parties in the suit-flat later in point of time, however, this evidence does not indicate non-availability of suitable other residence. It is not tenants' case that flats in Qutbi CHS or Brahma Angan were sold. Assuming that they are sold, admittedly they were acquired.

36. So far as the case of Defendants-Tenants that flat in Qutbi Manzil is acquired by Salim – other son of Defendant No. 1 -Tenant and his father's name is joined out of respect, the same cannot be held as sufficient to escape from the clutches of acquisition of other

suitable residence because, admittedly the suit-flat is purchased in joint name of tenant's husband. Defendant No.1 can certainly be stated to have enforceable right of residence in the flat of her husband. It is nobody's case that Defendant No.1 and her husband were having strained relations or there was any dispute pending in that regard. The judgment relied on by the Appellate Court in the case of **J. Marathe (deceased) and others versus P. V. Kalohe [2004 (6) Bom. C.R. 721]** itself clarifies that ultimately whether the premises in 'another town' can be considered as 'suitable alternate residence' would depend upon the facts and circumstances of the case and, therefore, decree can be passed on the ground of section 13 (1) (l) of the Bombay Rent Act.

37. In the facts and circumstances discussed above, in my view, Defendant No.1 has obtained other suitable residence, which was rightly held by the Trial Court as proved on appreciation of same evidence. The conclusion drawn by the Trial Court is most probable and therefore, it should not have been interfered with by the Appellate Court.

38. The Appellate Court has taken judicial notice of the distance between Mumbai and Pune and has held that Plaintiffs have failed to prove that Defendant No.1 has 'shifted' to other accommodation alongwith family members. The Appellate Court has confused the ground of 'acquisition of suitable residence' with the ground of 'non-user'. They are different and distinct grounds. It is material to note that the law under section 13 (1) (l) does not require the Landlord to prove that the Tenant has 'actually shifted' to other suitable residence

and what is required to be proved is that the tenant has after coming into operation of the Bombay Rent Act has 'built, acquired vacant possession of suitable residence'.

39. Lastly, let us consider how the Appellate Court has dealt with the ground of nuisance and annoyance which is discussed in paragraph No.65 to Paragraph No.82 of the impugned Judgment.

40. In 2010, by amending plaint, ground of nuisance and annoyance was added to contend that without Plaintiffs' permission, the Defendants-Tenants have created pathway by making concrete elevation at the entry of the suit building causing nuisance and annoyance. Other contention is about keeping 9 to 10 potted plants outside the window of the suit-flat and keeping water pipe causing continuous seepage thereby damaging western side wall of the first floor which has resulted in damage to suit building.

41. In this respect, it is necessary to clarify at the outset, that this Court is not entering the controversy about tenants keeping plants and watering them causing seepage and damage to the outside wall of the suit building, because there is conflicting evidence on record led by P.W.2 and D.W.2 and it clearly falls in the realm of disputed question of fact.

42. The Appellate Court was conscious of the fact that the Defendants-Tenants have admitted that without permission of the landlord, tenants have created pathway by making concrete elevation at the entrance of the suit building. The landlord has contended that due to this act, nuisance is caused to the Plaintiff-Landlord to bring

his cars and park them in the garage and during monsoon, water gets accumulated on the sides of the elevation, thereby causing dirt and unhygienic condition at the entrance of the suit building and it gets slippery causing risk to aged people. Explanation of the tenants is that since level of the municipal road is raised by the Municipal Corporation, water accumulates in the pathway and, therefore, concrete blocks are required to be kept in the pathway and walk on them to reach the staircase without getting feet and shoes wet and since it is risky to walk on concrete blocks, concrete elevation has been constructed. The Appellate Court has simply held that construction of concrete elevation at the entrance of the suit building does not fulfill the test of determining nuisance and annoyance. This finding is without reasons and therefore perverse.

43. In this respect, it is material to note that nuisance or annoyance is subjective concept. Section 13(1)(c) of the Bombay Rent Act permits the landlord to prove that tenant or any person residing with tenant is guilty of conduct which is nuisance or annoyance to the adjoining or neighbouring occupants. In the present case, the landlord is occupying the ground floor as well as first floor of suit building and therefore, nuisance or annoyance to the landlord occupying neighbouring premises can very well be considered under this ground. In the present case, the landlord has led evidence asserting that construction of elevated concrete pathway causes nuisance and annoyance to the landlord while parking his own cars and it creates unhygienic condition during monsoon. Since nuisance or annoyance depends on the subjective perception of the landlord

who is neighbouring occupant in the present case, in my view, it is not for the Court to brush aside the evidence led by the landlord in that respect.

44. In the present case, the landlord–PW.1 has entered witness box and stated about nuisance and annoyance. The Appellate Court has not given any reasons to disbelieve the case of nuisance and annoyance in respect of elevated concrete pathway.

45. In that view of the matter, even finding of the Appellate Court on the ground of nuisance and annoyance is found to be perverse.

46. As far as the judgment of **Dunlop India Limited (supra)** is concerned, the same is relied upon by learned counsel for the Respondents-Tenants in support of his contention that there is no non-user and physical possession by tenant himself or by other family members is not necessary, if there was reasonable cause for their remaining absent. If there is evidence that the tenant has wish to return, it cannot be said that there is no reasonable cause. Considering the fact that this court is not interfering in the concurrent findings on the ground of non-user, it is not necessary to deal with this Judgment.

47. As far as the Judgment of **Man Kaur (dead) By Lrs. (Supra)** is concerned, the same is relied upon by learned counsel for the Respondent-Tenant in support of his submissions as to who should give evidence for matters involving personal knowledge. In the present case, the tenant's son has entered witness box. Since this Court is not doubting the evidence led by tenant's son as Constituted

Attorney, it is also not necessary to further consider this judgment.

48. In the aforesaid facts and circumstances and for the reasons indicated above, in my considered view, findings by the Appellate Court in respect of three grounds - erection of permanent structure read with contravention of provisions of section 108 (o) of the Transfer of Property Act, 1882 acquisition of suitable residence and nuisance and annoyance are found to be based on perverse appreciation and misreading of pleadings and evidence and if allowed to stand, would amount to miscarriage of justice. Therefore the same are being interfered with, drawing support from paragraph 10 of the Judgment of the Hon'ble Supreme Court in **Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav [1965 SCC OnLine SC 83]** and paragraph 43 of the Judgment of the Hon'ble Supreme Court in **HPCL, Vs. Dilbahar Singh [(2014) 9 SCC 78]**. This court is also drawing support from **Neelakantan and Ors. vs. Mallika Begum (supra)** and **S. F. Engineers vs. Metal Box India Ltd (supra)** for interfering with the impugned judgment because the findings on the above said three grounds are based on misleading of evidence and suffers from legal infirmity materially prejudicing the rights of the landlord.

49. In the result, Civil Revision Application succeeds partly. The impugned Judgment and Decree dated 11.10.2013 is quashed and set aside to the extent of grounds of erection of permanent structure, acquisition of suitable residence and nuisance and annoyance. Eviction decree passed by the Trial Court dated 23.08.2011 is confirmed only on the above three grounds.

50. At this stage, learned Counsel for the Respondents-Tenants seeks stay of the eviction decree for a period of eight weeks.

51. In the facts and circumstances of this case as explained above, I do not deem it appropriate to grant stay, however, in view of the request made, Respondents are granted six weeks time to hand over vacant and peaceful possession of the suit-flat, subject to Respondents and all adult family members of the Respondents filing written undertaking in this Court, stating that no third party rights will be created and no third person will be inducted in the suit-flat. The undertaking to be filed within a period of two weeks from today.

52. In view of disposal of the Civil Revision Application, Interim Application for expeditious hearing is also disposed of in above terms.

53. All concerned to act on duly authenticated and digitally signed copy of this order.

[M.M. SATHAYE, J.]