IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 88 OF 2026

1. Mohammed Salim Hajisattar Dayatar
2. Farzana Salim Dayatar

...Applicants

Versus

Bela Avinash Mehta ...Respondent

Mr. Vasim Siddiqui a/w Mr. Faiz Ali Khan, for the Applicants.
Mr. Pradeep Sancheti, Senior Advocate h/f Mr. Amardev Uniyal, for the Respondent.

SANTOSH SUBHASH KULKARNI

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CORAM: N. J. JAMADAR, J.
RESERVED ON: 30th SEPTEMBER, 2026
PRONOUNCED ON: 18th NOVEMBER, 2026

JUDGMENT:-

1. This revision application is directed against a judgment and decree dated 23rd December, 2025, passed by the learned Judge, City Civil Court in S.C. Suit No.2426 of 2016, whereby the applicants-defendants have been directed to put the respondent-plaintiff in possession of Room No.12B, Khimani Mansion, 26 MMC Road, First Cross Road, Mahim (West), Mumbai, ('the suit premises'), and an inquiry to determine the *mesne profits* has been ordered.

2. The background facts leading to this application can be stated in brief as under:

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2.1 Mr. Rahim Khimani is the owner and landlord of the building known as 'Khimani Mansion', wherein the suit premises is situated. Late Devendra Mehta, the brother-in-law of the plaintiff was residing in room No.13 on the first floor of the Khimani Mansion. Mrs. Lilian L. Fernandes was the tenant in respect of the suit premises. Under an agreement dated 29th July, 2008, the tenancy came to be transferred in the name of Mohammed Salim Hajisattar Dayatar (D1), purportedly with the consent of the landlord. Since then the defendants were in the occupation of the suit premises as the tenants thereof. In the year 2012, the defendants desired to vacate the suit premises.

2.2 The plaintiff claims, late Devendra Mehta had negotiations with the defendants and, eventually, the defendants surrendered the tenancy rights in the suit premises in favour of the landlord under a declaration dated 2nd July, 2012. After the surrender of the tenancy by the defendants, the plaintiff came to be inducted as a tenant in the suit premises at an increased monthly rent of Rs.80/-. The plaintiff had been in the occupation of the suit premises.

2.3 On 21st March, 2016, defendant No.1, alongwith his associates Shoeb and Junaid, illegally broke open the door of the suit premises, unlawfully entered into the suit premises and

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kept the belongings of the defendants in the suit premises. Sushma Mehta (PW3), the wife of Devendra Mehta, who resides in the said building in flat No.13, informed the plaintiff about the said incident and FIR No.110/2016 was lodged against the defendant No.1 and his associates at Mahim Police Station.

2.4 The plaintiff thus instituted the instant suit under Section 6 of the Specific Relief Act, 1963, alleging illegal dispossession at the hands of the defendants, and seeking restoration of the possession of the suit premises to the plaintiff and claiming *mesne profits.*

2.5 The defendants resisted the suit. It was categorically denied that defendant No.1 had surrendered the tenancy in respect of the suit premises in favour of the plaintiff. The purported declaration evidencing the surrender of tenancy dated 2nd July, 2012 was stated to be forged and fabricated. The defendants claimed to be in peaceful, continuous and uninterrupted possession of the suit premises. Conversely, the plaintiff was never in possession of the suit premises. The substance of the defence of the defendants was that by a concocting a false story of illegal dispossession, in connivance with the plaintiff, the landlord attempted to dispossess the defendants and, therefore, defendant No.1 was constrained to

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institute R.A.E. Suit No.410/2016 before the Court of Small Causes, Mumbai, seeking declaratory and injunctive reliefs.

2.6 On the basis of the aforesaid pleadings, the learned Judge, City Civil court, framed issues, *inter alia,* as to whether the plaintiff proved that she was in settled possession of the suit premises on or before 21st March, 2016 and that the defendants had dispossessed her without following due process of law. And after appraisal of the evidence, the learned Judge returned affirmative findings thereon. The learned Judge, City Civil Court, was of the view that absence of evidence to show that defendant No.1 had paid rent to the landlord after July 2012 till 14th December, 2016 and the lack of credible material to show the possession of the defendants over the suit premises after the surrender of tenancy under the declaration dated 2nd July, 2012 indicated that the plaintiff had been in possession of the suit premises prior to 21st March, 2016 and she ws unlawfully dispossessed on 21st March 2016.

3. Being aggrieved, the defendants have invoked the revisional jurisdiction.

4. I have heard Mr. Vasim Siddiqui, the learned Counsel for the Applicants, and Mr. Pradeep Sancheti, the learned Senior Advocate for the respondent, at some length. With the

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assistance of the learned Counsel for the parties, I have also perused the evidence and material on record.

5. Mr. Siddiqui, the learned Counsel for the applicants, submitted that the learned Judge, City Civil Court, committed a manifest error in returning a finding that the plaintiff was in possession of the suit premises on 21st March, 2016. The learned Judge, City Civil Court, completely misread the evidence and ignored the admissions elicited in the cross-examination of the plaintiff (PW1) and Sushma (PW3), which demonstrate that the plaintiff had never been in possession of the suit premises.

6. Secondly, Mr. Siddiqui urged that the learned Judge, City Civil Court, misdirected himself in placing reliance on the purported declaration of surrender of tenancy (Exhibit-28) and the absence of rent receipts for the intervening period as it was for the plaintiff to prove her case. In the process, the learned Judge transgressed the jurisdictional limits of inquiry in a suit under Section 6 of the Specific Relief Act and ventured into the questions of lawful tenancy, in respect of which the jurisdiction of the Civil Court is expressly barred.

7. Thirdly, Mr. Siddiqui submitted that the trial court was required to evaluate whether the plaintiff succeeded in making out a case of possession over the suit premises and unlawful

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dispossession therefrom. Though the plaintiff miserably failed to establish both facts by leading cogent evidence, the learned Judge, City Civil Court, returned affirmative findings on those issues on the basis of surmises and conjectures. The overwhelming evidence tendered by the defendants to establish their possession over the suit premises during the relevant period, was unjustifiably discarded.

8. Fourthly, the learned Judge, City Civil Court, did not properly appreciate the objections to the admissibility of the purported declaration of surrender of tenancy dated 2nd July, 2012 on the count of it being an insufficiently stamped instrument, and the same being otherwise a false and fabricated document. Mr. Siddiqui would urge, if the aforesaid factors are considered cumulatively an inference becomes inescapable that the impugned decree suffers from the vice of perverse appreciation of evidence and material irregularity in the exercise of jurisdiction.

9. Per contra, Mr. Sancheti, the learned Senior Advocate for the respondent, would support the impugned judgment and decree. Mr. Sancheti would urge, in exercise of revisional jurisdiction, this Court may not re-appreciate the evidence like an appellate court. If the impugned judgment and decree is

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examined keeping in view the parameters of the limits of revisional jurisdiction, Mr. Sancheti would urge, it cannot be said that there was either jurisdictional error or material irregularity in the exercise of jurisdiction by the trial court.

10. Even on the merits of the matter, Mr. Sancheti would urge, the plaintiff has proved by cogent evidence both the factum of previous possession and unlawful dispossession. The evidence was required to be appreciated in the backdrop of the sequence of events commencing from the surrender of tenancy by defendant No.1 to unlawful dispossession of the plaintiff by the defendants. In that context, the contemporaneous conduct of the parties and the evidence or absence thereof assumed importance.

11. Mr. Sancheti laid emphasis on two factors. First, the production of the original rent receipts, which were delivered by the defendants to the plaintiff at the time of surrender of the tenancy, which pertained to the period prior to the surrender of tenancy by the plaintiff and not by the defendants. The custody of the original rent receipts with the plaintiff, according to Mr. Sancheti, establishes the factum of surrender squarely. Second, the absence of rent receipts in favour of defendant No.1 during the period from July 2012 to March 2016. No explanation could

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be offered for the absence of the rent receipts with the defendants for the said period. Thus, the learned Judge, City Civil Court, was fully justified in drawing an inference about the possession and dispossession, submitted Mr. Sancheti.

12. Before adverting to appreciate the aforesaid rival submissions canvassed across the bar, it may be necessary to note few uncontroverted facts. First, the fact that Rahim Khimani (PW5) is the landlord of the suit premises is not in dispute. Nor is it in dispute that Mrs. Lilian L. Fernandes was the tenant in respect of the suit premises and pursuant to an agreement for tenancy the defendant No.1 came in possession of the suit premises on 29th July, 2008. Thirdly, it was indisputable that the landlord was issuing the rent receipts. Fourthly, the fact that late Devendra Mehta, was a tenant in respect of Room No.13 on the first floor of the very same building and was residing therein alongwith his family members, including his wife Sushma (PW3) and son Shreyansh (PW4) was also not in contest. The controversy between the parties revolves around the question as to whether the plaintiff came in possession of the suit premises in the month of July 2012 after the purported surrender thereof by defendant No.1,

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and whether the plaintiff was unlawfully dispossessed on 21st March, 2016.

13. It would be advantageous to notice at the beginning itself, the contours of a suit for possession under Section 6 of the Specific Relief Act. Possession is considered to be nine points in law. The policy of law is to accord recognition to possession and condemn dispossession of a party in settled possession without following the due process of law. Law proscribes recovery of possession of a property by resorting to extrajudicial means.

14. Section 6 of the Specific Relief Act thus provides a swift and effective remedy to a person who has been unlawfully dispossessed of an immovable property without his consent. The question of title to the property, in such a situation, becomes immaterial. The only question that the Court has to determine is, whether the plaintiff was in possession of the subject property and whether he had been illegally dispossessed therefrom within six months prior to the institution of the suit. The avowed object of Section 6 is to restrain a person from using force, violence and other illegal means to dispossess another without following due process of law.

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15. In the case of ***M. C. Chockalingam and Others vs. V. Manickavasagam and others***[1], the Supreme Court has enunciated that what Section 6 provides is that, a person, even if he is a landlord, cannot take the law into his own hands and forcibly evict a tenant after the expiry of the lease. This section is relevant only to the wrongful act of a person, be it by a landlord, in forcibly recovering possession of the property without recourse to law. Section 6 frowns upon forcible dispossession without recourse to law but does not at the same time declare that the possession of the evicted person is lawful possession. The question of lawful possession does not enter the issue at that stage. All that the court is then required to consider is whether an evicted person has been wrongfully dispossessed and whether he has come to the court within six months of the dispossession. The various civil rights between the landlord and the tenant will have to be adjudicated upon finally in a regular civil suit, if filed.

16. In the case of ***S. R. Ejaz vs. T. N. Handloom Weavers' Cooperative Society Ltd.***[2]***,*** the Supreme Court again emphasised the object of Section 6 and the law's abhorrence of dispossession of a person without following due process of law.

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1 AIR 1974 Supreme Court 104.

2 (2002) 3 SCC 137.

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The observations in paragraph 8 are instructive and hence extracted below:

> "8. In our view, if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe nor the citizens can protect their properties. Law frowns upon such conduct. The Court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or the legal rights would be given go bye either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and 'might would be right' instead of 'right being might'. This Court in *State of U.P. and others vs. Maharaja Dharmander Prasad Singh and others [(1989) 2 SCC 505]* dealt with the provisions of Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra-judicially by use of force, from a lessee, even after the expiry or earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The Court also held that there is no question of Government withdrawing or appropriating to it an extra judicial right of re-entry and the possession of the property can be resumed by the Government only in a manner known to or recognized by law."

17. In the light of the aforesaid legal position, in the context of a suit for recovery of possession of immovable property under Section 6 of the Specific Relief Act, reverting to the facts of the present case, first the aspect of possession. The tenor of the plaintiff's claim was that defendant No.1 was a tenant in respect of the suit premises and after the tenancy came to an end purportedly by way of surrender in the month of July 2012, the plaintiff came to be inducted in the suit premises. What was the material before the trial court to substantiate the said claim?

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18. The plaintiff predominantly relied upon the rent receipts issued by the landlord for the months commencing from July 2012 to March 2016 (Exhibits-7/8 to 7/20). In addition, the plaintiff examined the landlord Abdul Rahim Khimani (PW5) as her witness. Abdul Rahim Khimani (PW5) deposed that in July 2012, defendant No.1 who was in the occupation of the suit premises delivered the possession thereof to the plaintiff. Since then the plaintiff had been in the occupation of the suit premises. Conversely, Abdul Rahim Khimani (PW5) declined to accept the rent which was sought to be tendered by defendant No.1 vide cheque dated 14th December, 2016 towards the arrears of rent from 1st July, 2012 to 31st December, 2016, under a receipt purportedly dispatched on 15th December, 2016. Abdul Rahim Khimani (PW5), the landlord, refused to accept the rent so tendered and returned the cheque vide communication to the effect that the defendants were not the tenants in respect of the suit premises.

19. The aforesaid exchange of correspondence between the landlord and the defendants implied that the defendants had not paid rent since July 2012 and the arrears of rent for the period 1st July, 2012 to 31st December, 2016 were sought to be tendered vide letter styled as a receipt dated 15th December,

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2016. The situation which thus emerged was that, for the period for which the plaintiff claimed to have been in possession of the suit premises, the landlord had issued the rent receipts in her favour. In contrast, the defendants, who were indisputably in the occupation of the suit premises from July 2008 to July 2012, did not have the rent receipts for the period beyond July 2012 as they had not admittedly paid rent. The evidence of the landlord Abdul Rahim Khimani (PW5) thus assumes critical salience.

20. The conduct of the defendants during the relevant period also bears upon the probabilities of the case. Ordinarily, there ought to have been some action on the part of the defendants if the landlord did not accept the rent. Complete inaction till the month of December, 2016 cannot be said to be immaterial or inconsequential. When confronted with the said aspect, during the course of his cross-examination of Mohd. Salim (DW1) had a lame excuse that he might have forgot to write a letter to the landlord for accepting rent in respect of the suit premises before December 2016. The evidence was required to be appreciated in the light of the fact that a state of affairs had continued from July 2008 to July 2012, and despite the discontinuation of that

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state of affairs, there was no action on the part of the defendants.

21. It is true, in the course of the cross-examination of the plaintiff, certain admissions were elicited with regard to the situation of the suit premises and the areas adjacent thereto. However, those admissions do not detract materially from the claim of possession over the suit premises for the reason that admittedly the plaintiff was residing in a flat in another building and the suit premises was being used by the members of her family as well as Devendra Mehta. The absence of actual residence of the plaintiff in the suit premises, sought to be critically commented upon by Mr. Siddiqui, is not of determinative significance. It was not necessary that the plaintiff must use the suit premises as a household to establish the factum of possession.

22. It is well recognized, the possession is not an abstract concept. Whether a particular property or thing is in possession of a person can be determined with reference to the existence of the right and power to control in relation to that property or thing, in that person. Whether such person is in general control of that property or thing has to be seen. In the case of ***Supdt. and Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar***

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Bhunja and others[3], a three-Judge Bench of the Supreme Court exposited what possession in law signifies. The observations in paragraphs 13 to 15 are material and hence extracted below:

> "13. "Possession" is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the contexts of all statutes. Dias & Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorizing it is that of "possession". Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Ed., 1966) caused by the fact the possession is not purely a legal concept. "Possession", implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It **involves power of control and intent to control.** (See Dias and Hughes, ibid)
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> 14. According to Pollock & Wright,
>
> > "when a person is in such a relation to a thing that, so far as regards the thing, he can assume, exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house or land occupied by him or in any receptacle belonging to him and under his control, he is in physical possession of the thing".
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> 15. While recognising that "possession" is not a purely legal concept but also a matter of fact; Salmond (12th Ed., page 52) describes "possession, in fact", as a relationship between a person and a thing. According to the learned author the test for determining "whether a person is in possession of anything is whether he is in general control of it"."
>
> (emphasis supplied)

23. In the case at hand, an endeavour was made on behalf of the defendants to drive home the point that the suit premises was allegedly taken by Devendra Mehta. Mr. Siddiqui invited attention of the Court to the manner in which the plaintiff (PW1)

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3 (1979) 4 SCC 274.

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and Sushma Mehta (PW3) fared in their cross-examination in regard to the part played by Devendra Mehta in allegedly taking the suit premises. However, in the process, as rightly submitted by Mr. Sancheti, the defendants strengthened the case of the plaintiff. It was suggested to Sushma Mehta (PW3) that Devendra Mehta was managing affairs of the husband of the plaintiff. An extra key of room No.12B was handed over to her, since the date suit premises was acquired by them. Sushma Mehta, went on to concede that the suit premises was acquired by Devendra Mehta and not by Bela Mehta, the plaintiff.

24. The aforesaid evidence is required to be considered in the backdrop of the averments in the plaint that since Devendra Mehta was already occupying room No.13 on the first floor of the said building and was managing affairs of the family, he had negotiated with the landlord and the defendants. Moreover, the suggestion that one key of the suit premises was with Sushma Mehta by implication admits the factum of possession.

25. Another factor which weighed with the learned Judge was the production of the original rent receipts for the period for which defendants were admittedly in possession of the suit premises, by the plaintiff. There was no plausible reason for the plaintiff to be in custody of those original rent receipts.

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26. The execution of the declaration evidencing the purported surrender of tenancy by defendant No.1 in favour of the landlord now deserves to be appreciated in the aforesaid context. The thrust of the defence was that the said declaration is forged and fabricated. In a suit under Section 6 of the Specific Relief Act, the trial court was not expected to record a definitive finding about the genuineness or otherwise of the said document. R.A.D. Suit No.410/2016 was instituted a couple of months before the dispatch of the letter to the landlord. Thus, the said aspect can be legitimately determined by the Small Causes Court as the defendants are seeking a declaration about the tenancy. In the instant suit, the said declaration assumed importance from the point of view that a state of affairs which continued up to that point, namely the jural relationship between the landlord and the defendants, did not obtain thereafter and instead the plaintiff appeared to be in possession of the suit premises.

27. In the aforesaid view of the matter, the learned Judge, City Civil Court, cannot be said to have committed any error in returning the finding that the plaintiff was in possession of the suit premises on 21st March, 2016.

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28. On the aspect of dispossession, suffice to note that there was instantaneous reporting of the matter to the police by the plaintiff. Certain minor discrepancies in the evidence of Sushma Metha (PW3) as to the actual act of breaking open the lock do not detract materially from the plaintiff's claim. Nothing material could be elicited in the cross-examination of Shreyansh (PW4) who claimed to have witnessed the act of breaking open the lock and informed his mother Sushma. Once the factum of possession was established and the contemporaneous material indicated that the claim of the plaintiff that she was unlawfully dispossessed of the suit premises was preponderately probable, the issue of dispossession was required to be answered in the affirmative.

29. The upshot of the aforesaid consideration is that the learned Judge, City Civil Court, on the basis of the evidence and material has recorded justifiable findings of fact. The view taken by the learned Judge cannot be said to be perverse and the one which no court could have taken, nor does the impugned judgment suffer from any jurisdictional error or material irregularity in the exercise of jurisdiction. Therefore, in exercise of revisional jurisdiction no interference is warranted with the impugned judgment and decree.

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30. The application, therefore, deserves to be dismissed.

31. Hence, the following order:

: O R D E R :

The application stands dismissed.

[N. J. JAMADAR, J.]

At this stage, the learned Counsel for the applicant seeks stay to the execution and operation of the decree passed by the trial court.

In the light of the view this Court is persuaded to take, the prayer for stay to the execution and operation of the decree passed by the trial court is not justifiable.

Hence, the oral application stands rejected.

[N. J. JAMADAR, J.]

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