



**High Court Applies Test of Preponderance of Probability to determine Subletting in Commercial Tenancy**



CIVIL

# High Court Applies Test of Preponderance of Probability to determine Subletting in Commercial Tenancy

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**PUBLISHED** 28 August 2024

The Hon'ble Bombay High Court ("HC") was hearing a Revision Application challenging the decree passed by the Hon'ble District Judge-II, Panvel Raigad dismissing Regular Civil Appeal No. 189 of 2019 and upholding the decree passed by the Hon'ble Civil Judge Junior Division, Panvel in Regular Civil Suit No. 51 of 2005<sup>[i]</sup>. The HC held that subletting of commercial premises without the consent would be a breach of the terms of tenancy. The present case delves into the legal implications of non-compliance of the terms of the tenancy agreement and the potential repercussions of unauthorized subletting of the premise.

## Facts of the Case:

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In a legal dispute between the Plaintiff and Defendants, the Plaintiff, owner of a property with a building in Panvel, sued the Defendant No.1 to recover possession of a shop rented to him. The shop, located on the ground floor and admeasuring 14 ft x 9 ft ("**suit premises**"), was initially leased to the Defendant No.1 for operating a grocery store, as per agreements dated 13<sup>th</sup> April 1981 and 15<sup>th</sup> February 1996. The rent was Rs. 300 (Rupees Three Hundred Only) per month plus Rs. 111 (Rupees One Hundred One Only) in taxes, totalling Rs. 411 (Rupees Four Hundred Eleven Only).

Thereafter, in the start of June 2002, the Defendant No.1 closed his grocery business in the suit premises and began operating a new store at a different location, 'Thakur Palace.' Despite this, the suit premises were being used by the Defendant No.2, who is the Defendant No.1's brother, without the Plaintiff's consent. The Defendant No.2 used the suit premises as a warehouse, storing goods and putting up a common signboard with his shop. The internal door between the shops was also unlawfully opened and the space in front of the suit premises was used for storage.

The Plaintiff contended that the Defendant No. 1 was not using the premises for the agreed purpose and was thus entitled to recover possession. The Plaintiff also claimed the Defendant No.1 had not paid rent since December 2002, totalling Rs. 11,928/- (Rupees Eleven Thousand Nine Hundred Twenty Eight Only) and sought additional rent and damages of Rs. 426/- (Rupees Four Hundred Twenty Six Only) per month from the date of the suit.

In response, the Defendant No.1 contended that the Plaintiff was aware of the intended use of the premises as a warehouse, explaining the lower rent. The Defendant No.1 also denied operating a business at Thakur Palace and claimed that the use of the suit premises as a warehouse with the Plaintiff's knowledge.

## Proceedings Before the Ld. Trial Court:

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The Trial Court, after reviewing the evidence, ruled in favour of the Plaintiff on 9<sup>th</sup> July, 2013. It found that the Defendant No.1 was not conducting business in the suit premises and that the Defendant No.2 was using it illegally. However, the Hon'ble Court did not uphold the claim of subletting due to insufficient evidence of financial transactions between the Defendants.

The Ld. Trial Court observed that the Plaintiff failed to prove that the Defendant No.2 was using the open space in front of the suit premises. However, the Hon'ble Court found that the Plaintiff had a genuine and urgent need for the premises and that the Plaintiff would suffer significant hardship if the property was not returned. The Hon'ble Court also ruled that the Plaintiff was entitled to arrears of rent amounting to Rs. 11,928/- (Rupees Eleven Thousand Nine Hundred Twenty Eight Only) for the period from December 2002 to March 2005.

As a result, the Hon'ble Court ordered the Defendants to vacate and return possession of the suit premises to the Plaintiff. Additionally, the Hon'ble Court instructed an enquiry into the mesne profits, as per Order XX Rule 12 of the Civil Procedure Code, 1908, to determine the compensation for the period the Plaintiff was deprived of the premises.

The Applicants-Defendants appealed the Trial Court's decree of 9<sup>th</sup> July, 2013, by filing Regular Civil Appeal No. 189 of 2019 in the District Court, Panvel. The Appellate Court ruled that the Plaintiff's claim of bonafide requirement was not valid and favoured the Applicants-Defendants on this issue. However, the Hon'ble Court found that the tenant had violated the tenancy terms by not using the premises for its intended purpose and upheld the claim of subletting. Despite this, the Appellate Court rejected the argument of non-user without reasonable cause. Subsequently, the Appellate Court dismissed the appeal on 21<sup>st</sup> March, 2024, upholding the Ld. Trial Court's decision. Dissatisfied with this outcome, the Applicants thereafter filed a Civil Revision Application to challenge the Appellate Court's decree.

## Analysis:

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The HC ruled that the tenancies with respect to Shop No. 1 and 2 were created separately in favour of two distinct individuals. Neither can they enter or use the premises let out to another. The HC opined that in every case, where it is noticed that a third person is actually using the premises, the act must be construed as breach of conditions of tenancy. The principle being, beneficial legislation like Rent Control Act is not to be misused by the tenant to the complete disadvantage of the owner. The HC emphasized that in cases of commercial tenancies, it is necessary that the tenant alone uses the entire portion of the shop and does not let any other person to use any portion thereof. Furthermore, the HC held that the Ld. Trial Court erroneously held that subletting could not be established only on account of absence of evidence of payment of valuable consideration by Defendant No.2 to the Defendant No.1. As both the Defendants are engaged in the business of sale of grocery items, it is difficult for the Plaintiff to establish the arrangement. Thereby, applying the test of preponderance of probability, it can be inferred in the present case that there is subletting in favour of Defendant No.2. The HC, directed the Defendant No.1 to hand over the possession of the suit premises to the Plaintiff.

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[1] Narayan Damodar Thakur & anr. vs. Shri. Madanlal Mohanlal Malpani (Civil Revision Application No. 343 of 2024 with Interim Application (St.) No. 20513 of 2024).