

Tenant Rights and Family Definition in Rent Act

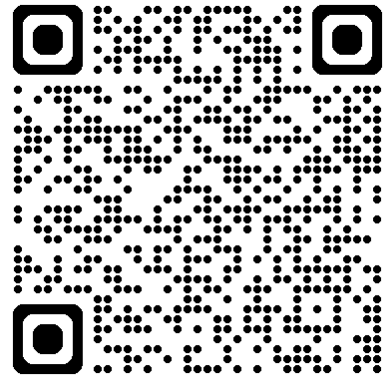
Case Name: Soli Behram Sukhadwala v. Nitin D. Sohni

Citation: 2024:BHC-AS:38809

Act: Bombay Rent Act, 1947

Case Brief & MCQs on this case is available in the eBook:

["Bombay High Court Cases in October 2024"](#)



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.187 OF 2007
WITH
CIVIL APPLICATION NO.395 OF 2019
IN
CIVIL REVISION APPLICATION NO.187 OF 2007

Soli Behram Sukhadwala

....Applicant

V/s.

1. Nitin D. Sohni
2. Atul D. Sohni
3. M/s. M.D. Choksey Construction
4. Babubhai Mohanlal Choksey
5. D.R. Khade, Court Receiver,
6. Jamshed K. Madan since deceased by his legal heirs-
 - 6A. Mrs. Perviz Jamshed Madan
 - 6B. Miss. Jinny Jamshed Madan
 - 6C. Mrs. Persis Shorab R. Vatcha
7. Dinshaw K. Madan
8. Smt. Silla P. Choksi since deceased through her legal heirs
 - 8(i) Pesi Choksi
 - 8(ii) Miss Anaita Pesi Choksi
 - 8(iii) Mrs. Nina Mody

....Respondents

Mr. Vishwajit Sawant, Senior Advocate with Mr. Akshay Doctor, Mr. Himank Singh & Ms Abha Gokhale i/b. M/s. Desai and Diwanji for the Applicant.

Mr. Pradeep J. Thorat with Mr. Deepak Chitnis, Ms Aditi Naikare & Mr. Aniesh Jadhav i/b. M/s. Deepak Chitnis Chiparikar & Co., for Respondent No.3.

Mr. Agnel Carneiro with Mr. Smit John Colaco i/b. M/s. Mulla & Mulla & Craige Blunt & Caroe for Respondent Nos.6(b) and 6(c).

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CORAM : SANDEEP V. MARNE, J.

Judgment reserved on : 20 September 2024.

Judgment pronounced on : 1 October 2024.

Judgment:

1) Revisionary jurisdiction of this Court under Section 115 of the Code of Civil Procedure, 1908 is invoked to set up a challenge to the judgment and decree dated 20/21 February 2006 passed by the Appellate Bench of the Small Causes Court. The Appellate Bench allowed Appeal No.532 of 2001 filed by Respondent No.3/Defendant No.3 and set aside judgment and decree dated 12 March 2001 passed by the learned Judge of the Small Causes Court, by which R.A.D. Suit No. 4857 of 1988 filed by the Applicant /Plaintiff was allowed and he was declared as tenant in respect of the suit premises.

2) The Applicant is aggrieved by the decision of the Appellate Bench of the Small Causes Court, which has set aside the declaration made by the learned Judge relating to his tenancy in respect of the suit premises. The short issue that arises for consideration in the present Revision Application is whether the Applicant /Plaintiff can be held to be a tenant in his capacity as family member of the deceased original tenant residing with her within the meaning of Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the **Bombay Rent Act**). A brief factual narration for better understanding of the issue at hand would be necessary.

3) Residential premises being first floor consisting of seven rooms, two rooms on the landing between first floor and the ground floor, two W.Cs., two bathrooms, four passages and one gallery situated

at Sohni Mansion, 107 Cumballa Hill, Mumbai-400 036 are the '**suit premises**'. Ms. Dinamai Rustomji Master (**Dinamai**) was the monthly tenant in respect of the suit premises. Defendant Nos.1 and 2 are the original landlords. It appears that Dinamai has sub-let portion of the suit premises, being four rooms, two rooms on landing, one W.C. and one bathroom and two passages to Dr. Kaikhshroo Madan and Mrs. Banubai K. Madan in or about 1958 (**sublet premises**). Dinamai remained in the possession of the balance three rooms, one bathroom, one W.C. and two passages and a gallery. Dinamai passed away on 13 November 1977 in the suit premises. Plaintiff claims to be nephew of original tenant-Dinamai and further claimed that he started residing with Dinamai since the year 1974. After Dinamai's death, Applicant continued his residence in the suit premises and addressed correspondence with the original landlord-Defendant Nos.1 and 2 for asserting his rights as tenant in respect of the suit premises. It appears that the building was auctioned by the Municipal Corporation for non-payment of taxes and Defendant Nos. 3 & 4 purchased the same on 17 May 1984. However, Defendant Nos. 1 and 2 challenged the auction sale and Court Receiver was appointed in respect of the property, which was subjected for auction sale. This prevented Respondent Nos. 3 & 4 from taking possession of the auctioned property.

4) In the above factual background, Plaintiff /Applicant first filed R.A.E. Suit No.1196/36 of 1988 against the heirs of Dr. Kaikhshroo Madan (sublettees) in Small Causes Court seeking their ejectment. Additionally, Applicant /Plaintiff also filed R.A.D. Suit No.5813 of 1988 in the Court of Small Causes for declaration that he is the tenant in respect of the suit premises within the meaning of Section 5(11)(c) of

the Bombay Rent Act. In the Suit, he impleaded original landlords (Defendant Nos. 1 & 2), auction purchasers (Defendant Nos. 3 & 4) and sublettees (Defendant Nos. 5 to 8). The Suit was contested by Defendant No.3 (auction purchaser) by filing written statement in the year 1991. It appears that Defendant Nos. 6 to 8 also filed their written statement. On account of sale of the premises to Defendant No.3, it appears that Defendant Nos.1 and 2 did not file their written statement. Parties led evidence in support of their respective claims. Plaintiff examined himself as PW1. Neither Defendant Nos.1 and 2 nor Defendant No.3 led any evidence. However, they cross-examined PW1. Defendant Nos.6 to 8 examined Defendant No.6 as DW-1. After considering the pleadings, documentary and oral evidence, the learned Judge of the Small Causes Court proceeded to decree the R.A. D. Suit No.4857 of 1988 by judgment and decree dated 12 March 2001. Plaintiff was declared as tenant of Defendant Nos.1 and 2 (original landlords and of Defendant Nos. 3 and 4 (auction purchasers). Depending on decision of Suit No.3221 of 1984 pending in this Court (between Defendant Nos. 1 & 2 and Defendant Nos. 3 & 4 relating to auction purchase), direction was issued for issuance of rent bills in respect of the suit premises in Plaintiff's favour. Defendant Nos. 1 to 4 were restrained from forcibly dispossessing Plaintiff from suit premises.

5) Aggrieved by the decree dated 12 March 2001 passed by the learned Judge of the Small Causes Court, Defendant No. 3 filed Appeal No. 532 of 2001 before the Appellate Bench of the Small Causes Court. By judgment and order dated 20/21 February 2006, the Appellate Bench has allowed the Appeal and has set aside the Trial Court's decree dated 12 March 2001 and has dismissed R.A.D. Suit No. 4857 of 1988. Revision Applicant/Plaintiff has filed the present Revision

Application challenging the decree passed by the Appellate Bench of the Small Causes Court on 20/21 February 2006.

6) On 27 June 2007, this Court has admitted the Revision Application and granted interim relief in terms of prayer clause (b) thereby staying the judgment of the Appellate Bench dated 21 February 2006 and restraining Respondent Nos. 1 to 4 from forcibly dispossessing the Applicant from the suit premises.

7) Mr. Vishwajit Sawant, the learned Senior Advocate appearing for the Revision Applicant would submit that the Appellate Bench of the Small Causes Court has erred in reversing well-reasoned judgment and order passed by the learned Judge of the Small Causes Court. That the Revision Applicant conclusively proved not only his relation to original tenant-Dinamai but also the factum of his residence as family member within the meaning of Section 5(11)(c) of the Bombay Rent Act. He would submit that three documents produced by Revision Applicant conclusively proved his residence with the deceased-tenant viz. Ration Card, Will and Codicil and affidavit of Dinamai. That factum of inclusion of Plaintiff's name in Ration Card of Dinamai coupled with her statement in the Codicil and affidavit dated 7 August 1976 clearly proved that Plaintiff is a family member, residing with Dinamai and therefore entitled to claim tenancy rights in respect of the suit premises under Section 5(11)(c). Additionally, there is voluminous correspondence to prove both relation as well as residence with deceased tenant-Dinamai. That immediately after Dinamai's death, Plaintiff gave intimation to original landlords (Defendant Nos. 1 and 2) about factum of his residence in the suit premises as tenant. That

though the letter was received by Defendant No.1, he chose not to give any reply and acquiesced Plaintiff's residence in the suit premises in capacity as tenant. That after noticing the transaction of purchase of suit premises, Plaintiff also gave independent intimation to Defendant No. 4. That till filing of the Suit in 1988, neither Defendant Nos. 1 and 2 nor Defendant Nos. 3 and 4 raised any objection about Plaintiff's continued residence in the suit premises. That dispute with regard to relationship with Dinamai as well as residence of Plaintiff in the suit premises at the time of her death was subsequently raised as an afterthought only after Plaintiff filed a declaratory Suit.

8) Mr. Sawant would further submit that the Trial Court has rightly appreciated the entire evidence on record by holding Plaintiff as family member of Dinamai. That Defendant Nos. 1 to 4 did not lead any evidence and disprove Plaintiff's relationship or residence with Dinamai. That the Appellate Bench has erred in casting doubts upon relationship between Plaintiff and deceased tenant-Dinamai. That Dinamai herself accepted Plaintiff as a close relative and nephew in Codicil as well as the affidavit. That the exact reason for shifting the residence of Plaintiff in the year 1974 in the suit premises was pleaded as well as proved before the Trial Court. That shifting the residence with Dinamai was not a matter of inconvenience but was necessitated as there was nobody else to look after her, who was at her advanced age. That Dinamai and Plaintiff maintained joint bank account. That in the Marriage Register, Plaintiff's address was reflected as that of suit premises.

9) Mr. Sawant would submit that no straitjacket formula can be adopted for determining a person as a member of family of the tenant. That courts have repeatedly held that the term 'family' is required to be given wider meaning by including every person related to the tenant. In support of his contention, he would rely upon judgments of the Apex Court in ***Kailasbhai Shukaram Tiwari Vs. Jostna Laxmidas Pujara & Anr.***¹, ***Baldev Sahai Bangia Vs. R.C. Bhasin***², and of this Court in ***Pandurang Narayan Mantri Vs. Anant Shankarrao Samel***³, and ***Dharamvir I. Joshi Vs. Jayant R. Patwardhan & Anr.***⁴ While considering the term 'family member' in the context of *bonafide* requirement of landlord, the Division Bench of this Court in ***Kanhaiyalal Shrivastava Vs. Bapurao Ganpatrao Nandanwar***⁵, has held that the term 'family' must be liberally and broadly construed so as to include near relatives of head of the family. He would submit that applying the ratio of the above judgment, Plaintiff's mother, who is cousin of deceased tenant-Dinamai (who in turn was daughter of Plaintiff's mother's mamaji), clearly fits into the definition of term 'member of family' within the meaning of Section 5(11)(c) of the Bombay Rent Act

10) Mr. Sawant would submit that the Appellate Bench has erred in drawing adverse inference against Plaintiff on account of non-examination of his mother to prove the relationship. That Plaintiff's mother had passed away in the year 1993 whereas the evidence in the suit began in the year 1999. He would further submit that when the original tenant herself had confirmed the relationship with Plaintiff, it

¹. (2006) 1 SCC 524

². (1982) 2 SCC 210,

³. 1980 SCC OnLine Bom 237

⁴. 2015 (6) Mh.L.J.33

⁵. 1988 Mh.L.J. 388

was not necessary to produce any additional evidence in the form of examining the mother. He would submit that the witness examined by Defendant Nos. 6 to 8 was interested one, who was not even aware of the situation of the suit premises and therefore the Trial Court had rightly discarded his evidence. Mr. Sawant would submit that in the light of overwhelming evidence produced by Plaintiff to prove both relation as well as residence with deceased tenant-Dinamai, the Trial Court had rightly decreed the Suit and the Appellate Bench has committed gross error in reversing the decree of the Trial Court.

11) Mr. Pradeep Thorat, the learned counsel appearing for Respondent No.3/Defendant No.3 would oppose the Revision Application submitting that the case clearly involves an attempt to transmit the tenancy by original tenant-Dinamai in favour of Plaintiff, between whom, there is no relationship. That all the documents such as Ration Card, Will and Codicil and affidavit are all created with the sole intention of transmitting the tenancy rights in favour of unrelated person being Plaintiff. That Plaintiff also deliberately showed his residence with Dinamai few days before her death with the ulterior motive of grabbing the suit premises. That Defendant No.3 has denied both relationship as well as residence of Plaintiff with original tenant-Dinamai. That Plaintiff was otherwise residing with his parents at Cusrow Baug, Colaba. That till the year 1978, Plaintiff's address in college records was maintained as Cusrow Baug, Colaba. That this important admission given by Plaintiff in his evidence clearly shows deliberate attempt to claim residence with Dinamai with sole objective of claiming tenancy rights by Plaintiff. Mr. Thorat would also highlight the discrepancy in relation of Plaintiff with Dinamai in Will, Codicil and affidavit. That in the original will, Dinamai claimed that Plaintiff

is his relative and improved upon the story in the Codicil by describing him as her 'nephew'. Again, in the affidavit, Dinamai described Plaintiff as her nephew with further addition that he was residing with her as her family member. That Will, Codicil and affidavit are created solely for the purpose of claiming relation and residence with Dinamai with a view to transmit tenancy rights in respect of the suit premises. That mere entry in the Ration Card cannot prove relation or residence of Plaintiff with the original tenant. That there was clear collusion between original tenant -Dinamai and Plaintiff for ensuring transmission of tenancy rights in favour of Defendant. That Plaintiff cannot be treated as a close relative of Dinamai by any stretch of imagination. Dinamai is described as daughter of Plaintiff's mother's mamaji. No cogent evidence is produced to prove even the said relation. That no other family member is examined as a witness to prove the said relationship. That even if said relationship is to be accepted, it cannot be treated that Plaintiff is member of family of Dinamai and in support, he relies on judgment of the Apex Court in ***Kailasbhai Shukaram Tiwari*** (supra) which is also relied upon by Mr. Sawant. Additionally, he also relied upon judgment of the Apex Court in ***Jaysen Jayant Rele and Ors. Vs. Shantaram Ganpat Gujar & Ors.***⁶, and of this Court in ***Babarjit Singh Hari Singh Vs. Manorama Vishwanath Surve***,⁷ Mr. Thorat would pray for dismissal of the Revision Application.

12) Mr. Agnel Carneiro, the learned counsel appearing for Respondent Nos. 6B and 6C would also oppose the Revision Application adopting the submission of Mr. Thorat. Additionally, he would submit

⁶. 2002 SCC OnLine Bom 218

⁷ 2024 SCC Online Bom 2069

that the parents of Defendant Nos.6 to 8 have resided in the neighbour of the suit premises in the year 1958 and that Defendant No.6 was the best person who give evidence about relationship and residence of Plaintiff with Dinamai. That DW1 gave specific evidence that he did not see Plaintiff occupying the suit premises during lifetime of Dinamai and that he started residing therein only after Dinamai's death. Taking me through the written statement filed on behalf of Defendant Nos. 6 to 8, Mr. Carneiro would submit that absence of relationship and residence of Plaintiff with deceased tenant was both pleaded as well as proved before the Trial Court. He would pray for dismissal of the Revision Application.

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

14) The short issue that arises for consideration in the present Revision Application is whether the Applicant/Plaintiff can be considered as a member of tenant's family residing with the tenant, for the purpose of being covered by the definition of 'tenant' under Section 5(11)(c) of the Bombay Rent Act. It would be apposite to reproduce definition of the term 'tenant' under Sub Section 11 of Section 5 of the Bombay Rent Act, which reads thus:

5(11) "tenant" means any person by whom or on whose account rent is payable for any premises and includes-

(a) such sub-tenants and other persons as have derived title under a tenant before the 1st day of February 1973;

(aa) any person to whom interest in premises, has been assigned or transferred as permitted or deemed to be permitted, under section 15;

(b) any person remaining after the determination of the lease, in possession, with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the first day of February 1973;

(bb) such licensees as share deemed to be tenants for the purposes of this Act by section 15A

(bba) the State Government, or as the case may be, the Government allottee, referred to in sub-clause (b) of clause (1A), deemed to be a tenant, for the purposes of this Act by section 15B;

(c)(i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant's family residing with the tenant at the time of his death or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;

(ii) in relation to any permission let for the purposes of education, business, trade or storage, when the tenant dies, whether the death has occurred before or after the commencement of the said Act, any member of the tenant's family using the premises for the purposes of education or carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court.

Explanation: The provisions of this clause for transmission of tenancy, shall not be restricted to the death of the original tenant, but shall apply, and shall be deemed always to have applied, even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant.

15) Since Plaintiff sought declaration of his status as tenant in respect of the suit premises, it became incumbent for him to prove that he is a member of family of Dinamai and that he was residing with her at the time of her death. For proving the former i.e. relation with Dinamai, in the plaint, Plaintiff vaguely described Dinamai as his aunt. However, he did not describe his exact relationship with Dinamai. He raised following pleadings in support of his claim of tenancy.

3. The Plaintiff states that he was residing with his aunt Miss Dinmai Rustomji Master since 1974 as a member of her family in the suit premises and is in exclusive use, occupation and possession of the suit premises after the death of the said Dinmai. The plaintiff states that he married on 6.6.1977 and he continues to reside with his wife in the suit premises. The plaintiff states that he was residing with his aunt as a member of her family at the time of her death in the suit premises and continues to reside therein even today.

16) Thus, the pleaded case of Plaintiff was that he is member of family of his aunt Dinamai and was residing with her in the suit premises since 1974. It was further pleaded that after his marriage on 6 June 1977, he started residing with his wife in the suit premises. He further pleaded that after Dinamai's death, he inherited tenancy rights under Section 5(11)(c) of the Bombay Rent Act. Alternatively, he claimed that being heir and residing with Dinamai, he is entitled to tenancy right in respect of the suit premises.

17) Defendant No.3 denied any relationship between Plaintiff and Dinamai as well as his residence in the suit premises with Dinamai. Defendant No.3 pleaded in paragraph 3 of the written statement as under:

3. With reference to para 3 of the plaint, this defendant denies that the plaintiff was residing with the said Miss Dinmai since 1974 as member of her family and is in exclusive use occupation and possession of the suit premises after the death of the said Miss Dinmai as alleged or otherwise. This defendant further denies that the said Miss Dinmai Rustomji Master was aunt of the plaintiff as alleged. This defendant states that the plaintiff has no relationship with the deceased Dinmai and was not concerned with her at all. This defendant states that the said Miss Dinmai was or the plaintiff was neither dependent on one another in any way and there is no question of plaintiff being the member of the family of the deceased. This defendant denies that the plaintiff was residing in the premises as the member of the family of deceased Miss Dinmai Rustomji Master at the time of her death and has continued to reside as such till the date of filing of the suit as alleged. This defendant further denies that the plaintiff inherited the tenancy rights under sec.15(11)(c) of the Bombay Rent Control Act or under any provision of law. This defendant states that the plaintiff is not and can not be the tenant under the provisions of sec.5(11)(c) of the Bombay Rent Control Act. This defendant says that it is pertinent to note that plaintiff has not stated as to how the deceased Dinmai was his aunt as alleged. This defendant called upon the plaintiff to give better and full particulars of the alleged relationship between the deceased Dinmai and the plaintiff. This defendant denies that the plaintiff was the heir of the deceased Dinmai and was residing

as such with deceased Dinmai at the time of her death as member of her family and/or that he is entitled to tenancy right irrespective of the suit premises or the suit flat. This defendant, therefore, denies that the plaintiff is the tenant within the meaning of the Bombay Rent Control Act and is entitled to the protection under the provisions of the Bombay Rent Control Act.

18) Defendant Nos.6 to 8, who filed separate written statement, also denied both the relationship as well as residence of Plaintiff with Dinamai in the suit premises. They pleaded that Plaintiff was residing at Cusrow Baugh and came to the suit premises recently. They pleaded in paragraph 12 of their written statement as under:

12. With reference to para 3, these Defendants deny that the Plaintiff herein was residing with the said Dinamai since 1974 or as member of her family or in the suit premises or in exclusive use, occupation and possession thereof as alleged or at all. These Defendants put the Plaintiff to the strict proof of the said Dinamai being the aunt of the Plaintiff. These Defendants state that the Plaintiff was earlier residing at Cusrow Baug, Colaba and has come to the suit premises only recently. These Defendants are also not aware that the Plaintiff married on 6-6-1977 or that he continued to reside with his wife in the suit premises. These Defendants deny that the Plaintiff was or could be a member of the family of the said Dinamai or that he held such position at the time of her death or that he was residing with the said Dinamai or that he was residing in the suit premises at the time of her death or continues to reside as alleged or at all. These Defendants deny that the Plaintiff inherited or could inherit the tenancy right u/s. 5(11)(c) of the Bombay Rent Control Act or otherwise or at all. These Defendants deny that the Plaintiff was or is the heir or legal representative of the said Dinamai or that he is entitled to the tenancy rights. These Defendants deny that the Plaintiff was or is the heir or that he was residing with the said Dinamai at the time of her death or at any material time or as member of her family or that he is entitled to the tenancy right in respect of the suit premises or the suit flat or any part thereof or at all. These Defendants deny that the Plaintiff is a tenant within the meaning of the Bombay Rent Act or otherwise or that he is entitled to protection under the said act.

19) It is an admitted position that Plaintiff is not a Class-I heir of deceased tenant-Dinamai and there is serious dispute between the parties about his relationship with Dinamai. In ***Kailasbhai***

Shukaram Tiwari (supra), on which reliance is placed by both Mr. Sawant and Mr. Thorat, the Apex Court has held that apart from parents, spouse, brother, sisters, sons and daughter, if any other relative claims to be a member of tenant's family, some more evidence is necessary to prove that he/she always resided together as members of one family over a period of time. The Apex Court held in paragraph 14 as under:-

14. The question as to whether a person is a member of the family of the tenant must be decided on the facts and circumstances of the case. **Apart from the parents, spouse, brothers, sisters, sons and daughters, if any other relative claims to be a member of the tenant's family, some more evidence is necessary to prove that they have always resided together as members of one family over a period of time.** The mere fact that a relative has chosen to reside with the tenant for the sake of convenience, will not make him a member of the family of the tenant in the context of rent control legislation.

(emphasis & underling added)

20) Thus, as held by the Apex Court in ***Kailasbhai Shukaram Tiwari*** (supra) it becomes necessary for a person, who is not parent, spouse, brother, sister, son or daughter, to produce 'additional evidence' for establishing claim of tenancy. Furthermore, what also needs to be proved is residence together as member of one family, that too, 'over a period of time'. Mere occupation of tenanted premises alongwith the tenant for a short duration would not mean 'residence' with the tenant as member of the family. What essentially needs to be established is that the person claiming tenancy status and the original tenant must 'reside together' in the premises as a part of one single unit. Having considered the test laid down by the Apex Court in ***Kailasbhai Shukaram Tiwari*** for establishing tenancy right by a person, who is not parent, spouse, brother, sister, son or daughter, I proceed to

examine whether Plaintiff has discharged the burden in the present case.

21) As observed above, Plaintiff pleaded that original tenant - Dinamai was his 'Aunt' by maintaining silence about the exact relationship. However, in his evidence, he improved upon his case and stated that he is nephew of Dinamai. It is only at the stage of cross-examination that Plaintiff disclosed that Dinamai was 'daughter of Mamaji of his mother'. This relationship, disclosed for the first time in cross-examination is definitely not too close. In cross-examination, Plaintiff further admitted that *'I have no evidence to show my relationship with Dinamai'*. Except his bare words, Plaintiff has not produced any other evidence by examining any other member of his or Dinmai's family to prove his relationship with Dinamai. It must be borne in mind that both the sets of Defendants had specifically denied relationship between Plaintiff and Dinamai and since Plaintiff did not form part of close relationship with Dinamai, the burden on him to prove his status as member of Dinamai's family was indeed heavy. For discharging such heavy burden, it was incumbent for Plaintiff to adduce cogent evidence to prove his relationship with Dinamai. Far from producing any evidence, Plaintiff specifically admitted in the cross-examination that he has no evidence to prove his relationship with Dinamai. In my view therefore, Plaintiff has thoroughly failed to prove his relationship with Dinamai.

22) Mr. Sawant would urge that it was not necessary for Plaintiff to produce any other or further evidence in the light of statements made by Dinamai in her Will, Codicil and affidavit. However, Defendant did not have any chance of cross-examining Dinamai and therefore,

unilateral statements made in the Will, Codicil and affidavit of Dinamai (purpose for execution of which is being discussed in the later portion of the judgment), cannot be treated as cogent and sufficient evidence for the purpose of proving the relationship between Plaintiff and Dinamai.

23) Even if it is assumed momentarily that Dinamai was indeed daughter of Mamaji of Plaintiff's mother, the relationship appears to be distant. It is sought to be suggested that Plaintiff's mother and Dinamai were maternal cousins. Since relation is not too close, the onus for the Plaintiff became even stricter to prove residence with Dinamai as a part of one family unit. It is Plaintiff's own case that till the year 1974, he is resided with his parents at Cusrow Baug, Colaba. With regard to his claim of residence with Dinamai, some of the admissions given by Plaintiff during the course of his cross-examination are telling. It would be apposite to reproduce Plaintiff's admissions in the cross-examination:

Age of Smt. Dinmai at the time of her death was about 74 years. She died in the hospital. **Prior to her death, for about 4 and half months, she was in Parsee General Hospital. In the year 1974, I was 18 years old. Prior to year 1974, I was residing with my parents at D/44 Khushewbhag Shahid Bhagatsingh Road, Colaba, Bombay. I completed my education in the year 1988. In my School, my residential address is of Khushewbhag Colaba, I again say that upto my education in Engineering, my address was of Colaba. In the year 1978 I have completed my education in engineering.** It is not true none of the documents produced by me disclosed my occupation of suit premises prior to death of Smt. Dinamai. It is not true I have made the correction the envelope part of Ex.A colly to show my occupation of suit premises prior to year 1975. Besides me, I am not going to examine any witness. It is not true I have got correspondence Ex.K colly fabricated to produce in this suit. In January 1974 I came to reside in suit premises. I came to stay with Smt. Dinmai as I was in love with..... and I left the house of my parents to avoid strain relations. I have one brother and one sister. I am youngest. Except my bare words, I have no documentary evidence to show that Smt. Dinmai used to pay rent electricity charges, telephone

charges to me and that in my turn used to go and make the payment. In March 1975 my name was included in the ration card Ex.C. Under the instructions of Smt. Dinmai, my name was included in the ration card Ex.C. Today I do not have any documentary evidence that Dinmai Submitted the form application to include my name in the ration card Ex.C. It is true that in the ration card where my name is included, there is difference in the ink in the entry of my name and the date. I cannot explain about the difference in ink.

24) Plaintiff thus admitted that he was only 18 years old in the year 1974 when he allegedly shifted his residence with Dinamai in the suit premises. Till 1978, he was taking education in engineering. It is therefore incomprehensible as to why 18 years old student, who was otherwise residing with his parents at Cusrow Baug, Colaba would suddenly decide to shift his residence with Dinamai, who is not even his close relative. Plaintiff had elder brother and sister and why the youngest child aged only 18 years would shift out of comfortable residence with parents and reside with his distant relative, becomes incomprehensible. Though it is sought to be suggested shifting of residence was necessitated on account of ill health of Dinamai, it appears unbelievable that Plaintiff, who himself was possibly in need of being looked after on account of his tender age of 18 years, would leave the care and residence of his parents and shift in Dinamai's house to take care of her. What is most important is the fact that in his college documents, his residential address was disclosed as 'Cusrow Baug, Colaba'. Thus, in the year 1978 Plaintiff had two separate addresses, one being suit premises on account of insertion of his name in Ration Card of Dinamai and other at Cusrow Baug at Colaba in his college records. It is therefore, difficult to believe that Plaintiff was residing exclusively with Dinamai since 1974 as a part of her family with absolutely no connection with his parents. The theory of Plaintiff

shifting in tenanted premises to take care of Dinamai's health also appears to be unbelievable, considering his age.

25) Though Plaintiff was silent about the reason for leaving house of his parents in the plaint or in affidavit of evidence in the cross-examination, he attempted to explain his unusual conduct of leaving his parents' house at the age of 18 years stating that he wanted to avoid strained relationship with parents as he was in love with one lady. Except this stray statement in the cross-examination, no other explanation is given by Plaintiff for leaving the house of his parents at the age of 18 years, when he had four more years to complete his engineering.

26) As observed above, for establishing tenancy under Section 5(11)(c) of the Bombay Rent Act, a person must prove that he resided with the tenant as part of his family for a substantial period of time. In the present case, even if Plaintiff's case of shifting to Dinamai's house is to be believed, the residence is hardly of 2 to 3 years. There is nothing in evidence to suggest that Plaintiff used to regularly visit Dinamai or that Dinamai used to treat him as his son or that during the course of residence with his parents at Cusrow Baug, he used to intermittently reside with Dinamai prior to the year 1974. Therefore, it is wholly unbelievable that Plaintiff would leave lock stock and barrel from his parents' residence in the year 1974 snipping all connections with his parents and reside with old lady-Dinamai, while he was still taking education. The theory of residence with Dinamai appears to have been woven for the sole purpose of claiming tenancy rights in respect of the suit premises.

27) Much reliance is placed by Trial Court on the documentary evidence in the form of (i) Ration Card, (ii) Will and Codicil and (iii) affidavit of Dinamai dated 7 August 1976. So far as Ration Card is concerned, though the Appellate Court has expressed doubts about the authenticity of entry of Plaintiff's name therein, it has left the issue at that by raising mere doubt about the same and has proceeded on a footing that the entry could be genuine. I therefore, do not wish to delve deeper into the issue of genuineness of entry of Plaintiff's name in Dinmai's Ration Card. Even if it is assumed that the entry is genuine, the same pertains to -March 1975. Dinamai has passed away on 13 November 1977. Thus, Plaintiff got his name inserted in the Ration Card of Dinamai two and half years before her death. It appears that Dinamai was not keeping well for quite some time before her death, which is borne out from admissions given by Plaintiff in his cross-examination. Therefore, addition of Plaintiff's name in the Ration Card of Dinamai, shortly before her death not only creates doubts about the purpose for which such addition is made but more importantly, same cannot *ipso facto* be reason for inferring that Plaintiff resided with Dinamai over a period of time as a part of her family.

28) So far as Will and Codicil of Dinamai is concerned, the same are also executed in close proximity to the date of death of Dinamai. The Will is dated 28 April 1975 and Codicil is dated 7 August 1976. All the three documents are executed few months prior to death of Dinamai. Dinamai did not have any Class-I legal heir. It is possible that she desired transmission of tenancy rights in favour of known person rather than losing possession of premises after her death. This could be the reason why Dinamai chose to describe Plaintiff as relative and nephew and member of family and further claimed residence with

him in document executed few months before her death. In my view therefore, the Appellate Court has rightly appreciated the eagerness on the part of Dinamai in ensuring transmission of tenancy rights by executing the said documents. Therefore, Will, Codicil or affidavit are again insufficient for the purpose of concluding continued residence of Plaintiff with Dinamai for substantial period of time for being treated as member of her family.

29) The objective behind rent control legislation needs to be borne in mind while accepting tenancy claim of a person, who is not a close relative of the original tenant. Rent control legislation is enacted with twin objectives of rent control and protection from eviction. Since rent is legislatively controlled and is not permitted to be charged as per market rates, no protected tenant hands back possession of the tenanted premises as the same can be occupied by payment of paltry sums towards rent. The Legislature intended to protect the tenant from being charged market rent and from being evicted. The Legislature has gone a step ahead and has extended the rent control protection to the family members, so that tenant's death does not render them homeless. Thus, only those who resided with tenant as family members are to be extended the benefit of rent protection. The provision is not to be misused by bringing in distant relatives inside the premises shortly before tenant's death for ensuring transmission of rent control protection. After all the premises are owned by the landlord and the fetter put by the statute on charging market rent and evicting the tenant cannot be delayed endlessly even after tenant's death and the need for imposition of such fetter comes to an end.

30) The rent control legislation does not seek to create inheritable right in respect of the tenanted premises in favour of any tenant. By now, the law is well established that tenancy rights cannot be inherited. A quick reference in this regard can be made to the judgment of Apex Court in ***Vasant Pratap Pandit Vs. Dr. Anant Trimbak Sabnis***,⁸ in which it is held that bequeath of tenancy rights is impermissible. The objective behind making a provision for transmission of tenancy under Section 5(11)(c) of the Bombay Rent Act or Section 7(15)(d) of the Maharashtra Rent Control Act, 1999 (the **MRC Act**) is to ensure that a member of family of the deceased tenant is not thrown out of the tenanted premises only on account of tenant's death. The words 'member of tenant's family' is required to be appreciated in the light of objective behind incorporation of provision of Section 5(11)(c) in the Bombay Rent Act. The said provision is not made with the objective of ensuring that tenancy rights are transmitted amongst various relatives or desired persons by the tenant. The provision is aimed at ensuring that a person, who is actually residing with the deceased tenant as a member of his family is not rendered homeless.

31) The test here is whether tenanted premises was 'home' for Plaintiff and whether he was to be rendered homeless after tenant's death? The answer to the question, to my mind, appears to be in the negative. Tenanted premises were not 'home' for Plaintiff, who all along resided with his parents at Colaba. If the legislative object is borne in mind, Plaintiff, who all along resided with his parents at Cusrow Baug and conveniently shifted in the house of Dinamai couple of years prior to her death, solely for the purpose of ensuring transmission of tenancy

⁸. 1994 (3) SCC 481

rights in his favour, cannot be treated as tenant in respect of the suit premises. If Plaintiff is treated as a tenant in respect of the suit premises after Dinamai's death, the entire objective behind granting protection by rent control legislation to a member of family of deceased tenant residing with him would be completely frustrated. Recognising tenancy rights in favour of the Plaintiff in the present case would clearly tantamount to ensuring inheritance of tenancy rights as per the wish of Dinamai and Plaintiff. Such desire on the part of the duo is clearly borne out by contents of Will and Codicil, by which Dinamai clearly intended to ensure inheritance of tenancy rights by Plaintiff, which is impermissible in law. Even otherwise, the Plaintiff himself has pleaded in the plaint that after death of Dinamai he 'inherited' the tenancy rights in respect of the suit premises.

32) In my view, Plaintiff has thoroughly failed to prove his close relationship with Dinamai or residence in the suit premises for a substantial period of time as a part of family of Dinamai. Plaintiff is therefore, not entitled to be treated as tenant in respect of the suit premises under provision of Section 5(11)(c) of the Bombay Rent Act.

33) What remains now is to deal with the judgments relied upon by Mr. Sawant:

(i) ***Kailasbhai Shukaram Tiwari*** (supra) has already been dealt with above while considering the tests required by a person claiming tenancy right, who is not parent, spouse, brother, sister, son or daughter. Mr. Sawant has relied upon paragraph 12 of the judgment, which reads thus:

12. It was sought to be argued before us that since the father of the husband of Respondent 1 tenant and the father of Respondent 2 are real brothers, there is blood relationship between the two and therefore, it must be held that Respondent 2 is a member of the family of Respondent 1. This submission overlooks the fact that the tenant in question is not the husband of Respondent 1 but Respondent 1 herself. It cannot be said that Respondent 1 and Respondent 2 are blood relations. That apart, the question still remains as to whether in the facts and circumstances of the case it can be held that Respondent 2 is a member of the family of Respondent 1. It is futile to attempt to lay down a straitjacket formula as to who can be considered to be the member of the family of the tenant, particularly in the absence of definition of "family" in the Act. Having regard to relevant considerations, the question must be decided on the facts and circumstances of each case. The High Court has relied upon some decisions of this Court wherein the question raised was whether the brother was a member of the family, or a case where the tenant had to go to a foreign country on business, leaving behind his parents and family members, including brothers and sisters. In such a factual situation, this Court held that the persons who occupied the premises were the members of the family of the tenant. Such is not the case here.

In ***Kailasbhai Shukaram Tiwari*** the Apex Court has held that it is not possible to lay down any straitjacket formula for consideration of person as a member of family of tenant and it is held that question must be decided on facts and circumstances of each case. In the facts and circumstances of the present case, it is difficult to hold that Plaintiff resided with Dinamai in the suit premises as part of her family.

(ii) Judgment of the Apex Court in ***Baldev Sahai Bangia*** (supra) is relied upon in support of the contention that the word 'family' has to be given, not a restricted, but a wider meaning so as to include not only head of family but all members or descendants from a common ancestor, who are actually living with the said head. Apex Court held in paragraph 17 as under:-

17. A conspectus of the connotation of the term "family" which emerges from a reference to the aforesaid dictionaries clearly shows that the word "family" has to be given not a restricted but a wider meaning so as to include not

only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. More particularly, in our country, blood relations do not evaporate merely because a member of the family the father, the brother or the son- leaves his household and goes out for some time. Furthermore, in our opinion, the legislature has advisedly used the term that any member of the family residing therein for a period of six months immediately before the date of the filing of the action would be treated as a tenant. The stress is not so much on the actual presence of the tenant as on the fact that the members of the family actually live and reside in the tenanted premises. In fact, it seems to us that clause (d) of the proviso to Section 14(1) of the Act is a special concession given to the landlord to obtain possession only where the tenanted premises have been completely vacated by the tenant if he ceased to exercise any control over the property either through himself or through his blood- relations.

Judgment in **Baldev Sahai Bangia** (supra) is rendered in view of the provisions of Section 14 of Delhi Rent Control Act, 1958, providing for eviction if tenant or member of his family is not found to be residing in the premises for a period of six months before the date of filing of eviction application. The judgment in my view, would have no application to the present case. Even otherwise, upon giving wider meaning to the term 'family' I am unable to accept that Plaintiff is either member of family of Dinamai or resided with her as her family member in the suit premises over a period of time.

(iii) Judgment of Single Judge of this Court in **Pandurang Narayan Mantri** (supra) is relied upon by Mr. Sawant in support of his contention that the concept 'family' must be given a wider meaning in the context of Indian society. This Court held in paragraph 17 as under:

17. After discussing the above case law, a few words of our own on the concept of 'family' may not be out of place. The concept is not a rigid one. It is and it has always been an elastic one. Its content varies with reference to both time and place, historically as well as geographically. In the Indian Society the concept quite often embraces relations quite substantially

remote from the Peter Families. The concept of family consisting exclusively of the Peter Families, his spouse and lineal descendants, is of occidental origin, not oriental. But it was not adhered to very stringently even in the West. Here in India the concept of family is of even wider signification. The variations in the contents of the concept are denoted by various qualifications. Thus, we have concept of joint family, coparcenary and family simpliciter. Out of these, the concept of family is of the widest amplitude. In the instant case, Sulochanabai, the defendant and his wife could not be considered to be members of any joint family, they were certainly not coparceners; but there is certainly no reason to hold that they did not live as members of one family. They shared each others weal and woe. They messed together and shared the house-hold expenses together. A bond of family got engendered. Such a bond may not always result by joint residence. A paying guest living with a landlady does not become a member of the family of the landlady and does not become a member of the family of the landlady. There is no family bond in that case, only a strictly business relationship. She gives him shelter, he pays the price. He gets a better or cheaper accommodation, he lives with her; she gets someone who pays more price, she gets rid of him. No family bond. But in the case such as the instant one, price is not the prime consideration. The prime consideration is the mutual bond. This is what converts their joint residence into one of family.

The facts in ***Pandurang Narayan Mantri*** (supra) are clearly distinguishable. In that case, one Sitaram Tribhuvane was the original tenant, who resided in the premises with his wife Sulochana. After death of Sitaram, Sulochana continued residing in the suit premises and became tenant. Defendant's wife was Sitaram's niece and accordingly Defendant and his wife started residing with Sulochana to take care of her health. Defendant faced an allegation of being unauthorized sublettee of Sulochana. The case did not involve the issue of declaration of tenancy rights which is clear from the observation of this Court in paragraph 21 which reads thus:

21. However, I may make it clear that I am only presenting the other side of the picture with a view to show that it is possible to accept even the 3rd contention of the defendant that he was a sub-tenant of Sulochanabai during her lifetime. If this contention was accepted then the fact that he continued to be in possession on 21st May 1959, would mean that he had become lawful subtenant of Sulochanabai retrospectively and by virtue of the provisions of S. 14 of the B.R. Act he became direct tenant of the plaintiff landlord. The defendant, therefore, might be entitled to claim protection under the B.R. Act even on this ground. However, I may make it clear that I am confirming the decree passed by the lower Appellate Court

merely on the first two grounds upon which the decree dismissing the suit has been passed by the learned Judge.

Therefore, the judgment in ***Pandurang Narayan Mantri***, on facts, is clearly distinguishable. Even if the judgment is to be considered only in the context of meaning of the term 'family', it is difficult to accept, in the facts of the present case, that Plaintiff is a member of Dinamai's family.

(iii) The judgment of this Court in ***Dharamvir I. Joshi*** (supra) is rendered in the facts of that case where there were concurrent findings of two Courts below that Patwardhan was family member of deceased tenant and this Court thought it inappropriate to interfere with such concurrent findings of fact in exercise of writ jurisdiction. This Court held in paragraphs 10 and 11 as under:-

10. There is no warrant to interfere with the concurrent findings of fact recorded by the two Courts in favour of the Patwardhan being a member of the deceased tenant's family and residing with the deceased tenant, at the time of his demise, in the suit premises. The findings of fact are based upon both oral as well as documentary evidence on record. The two Courts have relied upon Ration Card and some correspondence emanating from the suit premises in support of such finding of fact. The jurisdiction under Article 227 of the Constitution of India is not appellate jurisdiction. Therefore, it is not for this Court to assess and re-assess the material on record with the view to determining whether upon reconsideration of such evidence some different view is possible or plausible. As long as the finding of fact is not vitiated by perversity, in the sense that the finding is based upon no evidence or on basis of inadmissible or irrelevant evidence or upon exclusion of relevant evidence, there is no scope to interfere. The two Courts have held that Patwardhan is a relative of deceased Janardhan. The two Courts have further held that Patwardhan was residing with deceased Janardhan at the time of his demise in the suit premises. This finding of fact cannot be regarded as perverse.

11. Mr. Bhatt, however, made reference to decision in case of Haji Ismail Valid Mohmad and ors. vs. Sports Club in the name of Union Sports Club

and ors., 1992 Bom.R.C. 154, in which it has been held that normally, 'family' includes parents, spouse, brothers, sisters, sons or daughters or in some cases widow of a predeceased son or the issues of the predeceased sons but no stretch of imagination it can be held that the distant nephews would be the family members howsoever broad meaning is given to the word family. This was to contend that Patwardhan, being a distant relative of the deceased tenant cannot be regarded as a member of the deceased tenant's family. At the same time, Mr. Bhatt also placed reliance upon the decision of this Court in case of Ramchandra G. Gharpure (since deceased, by heirs and legal representatives) and ors. vs. Madhav Dattatraya Phadke and ors. as well as another decisions, in which it has been held that even a mistress can be held to be a member of the deceased tenant's family. As noted earlier, in the present case, the two Courts, on basis of the material on record, have recorded the findings of fact that Patwardhan was indeed a family member of the deceased tenant and was residing with the deceased tenant at the time of his demise. In recording such finding, it cannot be said that the two Courts have not been conscious of the legal position, particularly in the context of expression 'resides' employed in section 7(15) of the Rent Act. The Apex Court, in the case of Smt. Jeewanti Pandey vs. Kishan Chandra Pandey, AIR 1982 SC 3, has held that the words 'resides' is a flexible one and has many shades of meaning, but it must take its colour and content from the context in which it appears and cannot be read in isolation. In the context of the Rent Act, the term 'resides' indicates something more than a temporary stay. A character of residence must be more or less of a permanent nature. Again, as noted earlier, the finding of fact in this regard is based upon both oral as well as documentary evidence. The two Courts have taken into consideration the documents like Ration Card and some correspondences emanating from the suit premises. The circumstance that late Janardhan was living alone and was afflicted by ailments is also relevant in the context of the case set out by Patwardhan in the plaint. Accordingly, there is no reason to interfere with the concurrent findings of fact recorded by the two Courts on the aspect of Patwardhan being the member of the family and residing with the deceased tenant at the time of his demises in the suit premises.

In the present case there are no concurrent findings. The Appellate Bench has refused to believe the theory of Plaintiff being family member of Dinamai or his residence in the suit premises with her. Judgment in ***Dharamvir I. Joshi*** (supra) would have no application to the facts of the present case.

(iv) Judgment of this Court in ***Kanhaiyalal Shrivastava*** (supra) is relied upon by Mr. Sawant in support of his contention that the term 'family' must always be liberal and broadly construed so as to include

near relatives of head of the family. The Division Bench in paragraph 8 and 9 held as under:

8. Some of these cases were considered by the learned Single Judge of this Court in *Inairabai Ganpatrao Kuhikar vs. House Allotment Officer*, 1984 Mh:L.J. 397. There, while dealing with the proviso to clause 23(1) of the Rent Control Order, the learned Judge took the view that where a landlady in her old decrepit age needed the help of her near relative like her sister's son and had decided to accommodate him and accepted his responsibility, her prayer for occupation under proviso to clause 23(1) of the Rent Control Order cannot be rejected on the ground that her sister's son is not a member of her family.

9. Our attention was drawn to the decision of the Supreme Court in *Baldev Sahai vs. R. C. Bhasin*, AIR 1982 SC 1091, where the word 'family' was given not a restricted but a wider meaning so as to include not only the head of the family but all members of descendants from the common ancestors who are actually living with the same head, and it was said that a beneficial provision must be meaningfully construed so as to advance the object of the Act, and curing any lacuna or defect appearing in the same. Thus, the term "family" must always be liberally and broadly construed so as to include near relations of the head of the family. That was a case which arose out of the provisions of the Delhi Rent Control Act 159 of 1958) but some marginal differences in the provisions of the two Acts would not make any difference to the meaning of the expression "family" which would have to be considered while applying the provisions of both the Acts. *Raghavendra P. Mudhol vs. Hanamant R. Kulkarni*, AIR 1986 Karnataka 219, is another case in which the expression "himself" was widely construed as recognising landlord's right to live with persons of his choice whether they were brothers, parents or friends/ and it was held that the definition of 'family' in section 3(ff) of the Karnataka Rent Control Act (22 of 1961), did not warrant a narrow construction of the provisions in section 21(1)(h) of the said Act. The learned Judge observed, however, that the choice and enlargement of the members of the family should not be fraudulent. Another Single Judge of this Court in *Abdul Samad Makhadum Baksh Shaikh vs. Sudha Akant Parakhe*, 1982 Mh.L.J. 647 pointed out that the expression "himself" occurring in section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), has been defined to mean not only the landlord alone but also his wife and children, and it would cover the case of a family and all persons staying together including dependents and other relations and also in certain circumstances a servant, and a dependent may not be a member of the family. Nevertheless, if he is staying with the landlord and is depending upon him, he would be considered as a member of the family and one whose requirements will have to be considered in the expression 'himself'.

The judgment has been rendered in the context of *bonafide requirement* of the landlord by interpreting the term 'himself' appearing in clause 13(3)(vi) of C.P. and Berar Letting of Houses and Rent Control Order, 1949. The judgment, in my view, would have no application to the fact and circumstances of the present case.

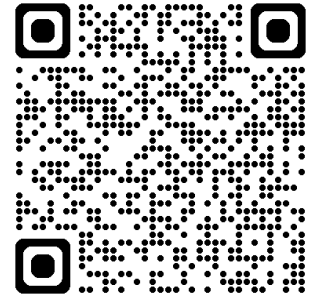
34) Considering the overall conspectus of the case, Plaintiff cannot be treated as tenant in respect of the suit premises under the provisions of Section 5(11)(c) of the Bombay Rent Act. No interference therefore is warranted in the decree passed by the Appellate Bench of the Small Causes Court. Civil Revision Application is accordingly **dismissed**.

35) In view of disposal of the Civil Revision Application, Civil Application does not survive and hence, stands disposed of.

[SANDEEP V. MARNE, J.]

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