

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 502 OF 2011

Lt. Col. Retd. Jaigopal Nagarajan)
 Age – 62 years, Occ : Retd. Army)
 Officer, R/at, M76/3, 1st Main Road,)
 Besant Nagar, Chennai 600 090) Petitioner

Versus

1. Mrs. Vasudev Mariwala,)
 Age 78 years, Occ : Business,)
 (Since deceased))

1A) Miss Namrata Vasudev Mariwala)
 Daughter, Age : 15 years,)
 Occu. : Education)

1B) Miss Latika Vasudev Mariwala,)
 Daughter, Age : 12 years,)
 Occu.: Education both minor duly)
 represented through their mother)
 and natural guardian)
 Mrs. Laxmi Vasudev Mariwala, i.e.)
 Respondent No.2 hereinabove having)
 their address same as of)
 Respondent No.2)

..... Proposed Respondents

2. Mrs. Vasudev Mariwala)
 Age 36 years, Occ. : Housewife,)
 Both R/at. Flat No.15, 4th Floor,)
 Grafiken Paradise, Phase II,)
 Off : N.I.B.M. Road, Kondhwa)

..... Respondents

Adv. J. S. Sarkhot i/b. Adv. Megha Kulkarni for the Petitioner.

Adv. V. B. Tapkir for the Respondents.

Senior Advocate Mr.Girish Godbole, *Amicus Curiae*, assisted by Adv. Kaustubh Thipsay.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 28 APRIL, 2026

PRONOUNCED ON : 8 JUNE, 2026

JUDGMENT :

1) The narrow controversy involved in the present petition has been noted in the order dated 9 January, 2026, "Whether the Revisional Authority u/S. 44 of the Maharashtra Rent Control Act, 1999, has power to condone the delay if the revision is filed beyond a period of 90 days?"

2) The Petitioner is a retired Army officer, who had filed eviction proceedings in the year 2008 against the Respondent before the "Competent Authority," being Application No. 32 of 2008, u/S. 23(A) of the Maharashtra Rent Control Act claiming therein a relief of eviction, possession and arrears of monthly amount from March 2004 with respect to Flat No. 15 situated at Graficon Paradise C.H.S.Ltd., 4th Floor, Kondwa, Pune (hereinafter referred as "suit flat). There is no dispute that Petitioner is the owner of the suit flat. The Competent

Authority by its order dated 27 August, 2009 dismissed the Application No. 32 of 2008 filed by the Petitioner on the ground that Petitioner has not obtained necessary Certificate as contemplated under Section 23 (A) (a) and did not prove that he is the landlord within the definition of Section 23 and that the Application u/S. 23 was not maintainable. However, the ground of *bona fide* need was answered in favour of the Petitioner.

2.1) Being aggrieved by the Order passed by the Competent Authority, the Petitioner filed Revision u/S. 44 of the Maharashtra Rent Control Act before the Additional Commissioner, Pune. As there was delay of 12 days in filing the Revision Application, a delay Condonation Application was preferred. The Additional Commissioner by it's Order dated 17 June, 2010 rejected the delay Condonation Application on the ground that there is no power u/S. 44 to condone the delay.

2.2) Dissatisfied with the order passed by the Competent Authority and the Additional Commissioner, the present Writ Petition under Article 227 of the Constitution of India, has been filed. By an Order dated 25 January, 2012, 'Rule' was issued in the present Writ Petition and the hearing was expedited. So also the Respondents were restrained from creating any third party rights and from parting with

possession of the suit premises.

2.3) By an order dated 9 January 2026, Single Judge of this Court crystallize the issue involved in this proceedings, viz. whether the Revisional Court had power u/S. 44 to condone the delay in filing the Revision. Since an important issue of law was involved in the present proceeding by my order dated 1 April, 2026, I had appointed Senior Counsel, Mr. Girish Godbole as an *Amicus Curiae* in the present proceeding.

3) I have heard the Ld. Counsel for the parties and the *amicus curiae* Ld. Senior Counsel Mr. Girish Godbole. Before I go into the issue involved in this matter, the legislative history of the Rent Act in the State of Maharashtra needs to be looked into.

3.1) The Maharashtra Rent Control Act, 1999 was brought into force on 30 March 2000 which extends to the whole of the State of Maharashtra, including the region of Vidharbha and Marathwada. Earlier for the region of Vidharbha what was applicable was “Central Provinces and Berar Letting of Houses & Rent Control 1949” and for Marathwada region “Hyderabad Houses (Rent, Eviction & Lease) Control Act, 1954”, and for rest of Maharashtra “The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947”. In the present proceeding the suit premises is situated in Pune, therefore earlier The

Bombay Rent Control Act, 1947 was applicable.

3.2) The Maharashtra Rent Control Act, 1999 is based on The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "Bombay Rent Act"). Most of the sections of the Bombay Rent Act has been bodily taken in the Maharashtra Rent Control Act, 1999.

3.3) In the present proceeding the landlord is a **Lieutenant Colonel (Retd.) of Indian Army**. Special provisions are made in the Maharashtra Rent Act of 1999, for a suit filed by such a landlord, which also prevailed in the earlier Bombay Rent Act.

3.4) The original Section 13A of the Bombay Rent Act, dealt with Landlord's entitlement to recover possession of terrace and structures for raising floor or floors. Section 13A of the Bombay Rent Act, 1947 was substituted by an amendment to the Bombay Rent Act in the year 1987 with insertion Sections 13A1 and 13A2.

3.5) Section 13A1 dealt with member's of armed forces, scientist's entitlement for recovery of their premises for their need. Section 13A2 dealt with landlord entitlement for recovery of license premises given for residence on expiry of license.

3.6) One has to also consider the reasons for amendment in the year 1987 to the Bombay Rent Act, thereby replacing Section 13A with that of Section 13A(1) and A(2). The relevant portion of the

objects and reasons of the amendment are reproduced herein below :-

Defence Services Personnel are liable to transfers and to be stationed in different parts of the country. They are often posted at non-family stations. Some of these personnel, who possess their own premises either in their home towns or elsewhere have necessarily to hire them out to other persons temporarily while they are away on duty. It has been represented to the State Government by the military authorities that on their retirement or transfer to non-family stations the serving and ex-service personnel find it extremely difficult to regain possession of their premises which they badly require for personal occupation permanently or for housing their families for the duration of their posting at non-family stations. In case of death of a service personnel while in service or death of ex-service personnel shortly after the retirement, the widow also finds it extremely difficult to regain possession of their premises for her personal occupation or occupation of her family.

The case of Defence Services Personnel due to their special obligations and disabilities do need different treatment from that accorded to other landlords and in fact special provisions have been made for them in some of the States, whereby processes for each personnel to regain possession of their premises have been simplified and made more effective. It is considered necessary to make a special provision in the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 to enable a member or retired member of the armed forces of the Union or a widow of such a member who dies while in service, or who dies within five years of his retirement, to regain possession of their premises, when bona fide required for occupation by them or members of their families and to provide that the Court shall be bound to pass a decree for eviction on such ground if such member or widow, as landlord, produces, at the hearing of the suit, the necessary certificate signed by the Head of his Service or His

Commanding officer or the Area or Sub-Area Commander within whose Jurisdiction the premises are situated.

[Emphasis supplied]

3.7) Section 13A1 fell for consideration before the Supreme Court in the case of *Shivram Anand Shiroor vs. Radhabai Shantaram Kowshik & Anr.* reported in (1984) 1 SCC 588. The Supreme Court held that the Bombay Rent Act is a welfare legislature enacted to protect tenants. However, from the general rule, so as to lean in the favour of a specifically category of landlords, who are the members of the Armed Services and who because of the exigencies of their services were not able to occupy their own premises during the course of their service. Hence Section 13A1 - was enacted to relax the rigour of Section 13 in favour of the landlord who is/was a member of the Armed Forces. The objects and reasons of introduction of 13A1 which primarily is to address the difficulties of the landlord who wants to recover their tenanted premises and the reason for it is, such premises while the landlord who is into Armed Services, is on his duty for the country, his premises should not be left into lock and key and if he has given his premises on a license basis, he should be able to recover the possession when he desires so.

3.8) The amended Section 13A2 of the Bombay Rent Act was

considered in the judgment of *Automatic Electric Ltd. Wadala, Bombay vs. Sharadchandra Vinayak Tipnis, 1996 (1) Mh.LJ 619.*

3.9) The 1987 amendment to the Bombay Rent Act also provided for establishment of a competent authority by following a special procedure for disposal under Part II-A of the Bombay Rent Act, which in fact is *pari materia* with the Chapter VIII of the Maharashtra Rent Control Act, 1999.

3.10) Sections 23 and 24 of the Maharashtra Rent Control Act, 1999 are *pari materia* with Section 13A1 and Section 13A2 of the amended The Bombay Rent Act, 1947 respectively.

3.11) If one looks to Section 23 of the Maharashtra Rent Control Act, 1999 it appears that for a special category of landlord, an additional forum is available to file a eviction suit under the provisions of *bona fide* requirement. Otherwise, under the Rent Act, there are around 14 grounds on which the landlord can seek eviction of a tenant u/S. 15 and 16, including that of the *bona fide* requirement. Inception of Section 23 in the Maharashtra Rent Control Act, 1999 will not mean that the grounds on which an eviction suit can be filed by a landlord u/S. 15 and 16 who is into Armed Forces, will not be able to do it. However, looking at the nature of Armed Forces duty, the legislature has also additionally granted him an forum u/S. 23 by way

of a special authority. Therefore, he might file a suit for eviction on the grounds as mentioned under Section 16 and/or Section 15, and he will also have a right to file an eviction proceeding u/S. 23.

3.12) As far as eviction proceeding filed by a landlord who is into Armed Forces u/S.15 or 16, and if his suit is dismissed, he will always have a statutory right to file an appeal u/S. 34, wherein the provisions of the Limitation Act, including that of Section 5, will be expressly applicable for him and he can seek a relief for condoning the delay in case there is a delay in filing the appeal.

3.13) Section 24 deals with a possession sought by a landlord of a license premises granted for residential purpose. Such applications for delivery of possession of the premises can also be made by the landlord before the “Competent Authority”. In short, where the premises is given on a leave and license basis, the licensor being a landlord can seek possession from the licensee if he does not vacate the premises after the expiration of license period or on termination of license by the landlord.

3.14) Chapter VIII deals with Summary disposal of certain applications. Section 40 under Chapter VIII, deals with appointment an “Competent Authority”. In Chapter VIII, Section 42, grants landlord a permission to prefer an Application before the “Competent

Authority”, for the purpose of recovery of possession of the premises from the tenant or licensee, as the case may be. Further Section 43, deals with the procedure of disposal of the application as mentioned in Section 42, and sub-section (5) of Section 43 mentions that the “Competent Authority” shall while holding an inquiry in the proceedings as mentioned in Section 42 follow the practice and procedure of the Court of Small Causes, including the recording of Evidence.

3.15) Section 44 mentions that the order passed by the “Competent Authority” will be non-appealable. Section 44, Sub-Section (1), mentions that no appeal shall lie against an order for recovery of possession of any premises made by the “Competent Authority”.

3.16) Sub-section (2) of Section 44, mentions that the State Government or such officer, not below the rank of an Additional Commissioner of Revenue Division, as the State Government may authorize, may, at any time, suo motu, or on the application of any person aggrieved, for the purpose of satisfying itself, call for record and pass an order with respect thereto.

3.17) It will be important to note the two different wordings of Sub-section (1) and Sub-section (2) of Section 44.

3.18) Sub-section (1) deals with, from an order for recovery of possession, no Appeal shall lie and as far as Sub-section (2) is concerned, It gives the State Government *suo motu* power to file a revision and also gives power to any person aggrieved by an Order passed on an application for recovery of possession. Therefore, such a aggrieved person can be a landlord or even an tenant.

3.19) There are two proviso to Sub-section (2) of Section 44. The first proviso mentions that both the parties has to be heard before passing the order. The second proviso deals with no power of revision at the instance of aggrieved person shall be exercised, unless the application is preferred within 90 days.

3.20) What section 44 mentions in sub-section (2) is that the State Government can *suo motu* prefer Revision challenging the judgment passed by the Competent Authority. In my view, in such a situation there is no period mentioned that within 90 days, they have to take that action. The proviso (2) of Section 44 (2) would come into play when an application is preferred by an aggrieved party.

3.21) Therefore, one if looks into the provisions of Section 42(2), there is a mention of the word 'aggrieved party'. Now, when you look into the words 'aggrieved party', in sub clause (2), along with the words 'recovery of possession' in sub-clause (1), this will always

mean, in my view, a tenant against whom an eviction decree is passed. Since an eviction decree can be passed only against a tenant and not against a landlord, therefore, when an aggrieved party is a tenant, he can't file an appeal. He can file Revision but Section 44 has put, a limitation to it by saying that the revision can be filed within 90 days.

3.22) Hence, it looks like for a landlord, for dismissal of his recovery application, there is no appeal or revision provided, it can't be that he is remedy less, he may invoke the provisions of Article 227 of the Constitution of India. It is also necessary to look into Section 41 which defines who is landlord for purpose of Chapter VIII and states that any person who creates a service tenancy, in favour of his employee is a landlord, so also any member of the armed forces, or a scientist, or a government servant, who is referred to in Section 23, Or a person who have given premises on license for residence as referred to in Section 24 is included in the definition of landlord.

3.23) In Chapter IV, Section 22 mentions about recovery of possession, in case of Tenancy created during Service period, this section deals with any kind of a landlord, and it is not specifically only for a special category of landlord like members of armed forces or scientists. This section authorizes any landlord who creates a service tenancy and in case of an tenant ceases to be in service or

employment of the landlord, either by retirement, resignation or termination of service, death or for any other reason, the “Competent Authority” has been empowered to deal with such an Eviction Application, made to it by the landlord within 30 days. The first proviso states that the “Competent Authority” may entertain an application under this section, after the expiry of the said period, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. Therefore, in short, the first proviso in Section 22 permits the “Competent Authority” to condone the delay in filing the Application under Section 22 subsection (1), if a sufficient cause has been shown by the landlord, who, for that matter, must be an employer.

3.24) In the present proceedings, the petitioner who is into Armed Services, had filed eviction proceedings under Chapter VIII, his proceedings was dismissed. Hence, he filed a revision under the provisions of Section 44. The provisions under which he filed eviction was under Section 23A, which was introduced to protect a special category of landlords which are covered by the cases enumerated under Section 23.

As far as the Limitation Act is concerned, its applicability to the quasi judicial or statutory authorities.

3.25) In the recent judgment of *Property Co. P. Ltd. vs. Rohinten Daddy Mazda, 2026 SCC OnLine SC 34* considered the various cases on the issue. The Supreme Court recognized that although the provisions of the Limitation Act, 1963 are *per se* inapplicable to applications or appeals before *quasi* judicial authority, yet principles underlying the provisions to the extent of Section 14 and Section 6 of the Limitation Act are made applicable to *quasi* judicial authorities. It held that Section 5 of the Limitation Act, which is more specifically stated in paragraph 90, discretionary powers to adjust the period of limitation itself must be granted to the *quasi* judicial body or tribunal and there must be a reasonable indication that the language of the statute that such a discretion which is otherwise vested in civil court is also in the concerned *quasi* judicial authorities, which is possible in two cases, (1) through a proviso or sub-section of the concerned section stating that *quasi* judicial body can extend time for filing an appeal/application, (2) through a separate provision within the scheme of the legislature stating that the *quasi* judicial authority would be able to apply the provisions of the Limitation Act. It is further stated in paragraph 131 that the first step in approaching such matters is to see whether the concerned body could be set to be a civil court or not. If answered in negative, then the endeavour is to find out

whether the body has been specifically empowered to apply the provisions of the Act, that is the Limitation Act, 1963. The general rule in so far as *quasi* judicial bodies or tribunals are concerned is that the provisions of the Act do not apply unless indicated otherwise. Chapter 8 of the said Act admittedly does not specifically empower the revisional authority to apply the provisions of the Limitation Act.

3.26) Section 34 of the Maharashtra Rent Act provides that an appeal shall lie from an order or decree within 30 days. The said Section 34 has an expressed proviso whereby provisions of Sections 4, 5 and 12 of the Limitation Act are held to be applicable. There is no similar provision enabling the revisional authority to apply the provisions of the Limitation Act under Section 44 of the Maharashtra Rent Control Act.

3.27) Single Judge of Nagpur High Court in the judgment of *Naranji Bhimji Family Trust, Nagpur vs. Additional Commissioner Nagpur & Ors.*, reported in *2015 (4) Mh.L.J. 538* has held that the Revisional Authority does not have power to condone delay of 639 days filed by the tenant. The High Court relied upon the decision of *Prakash Jain* (supra) to hold that the competent authority is not a court and the revisional authority is also not a court competent to invoke the provisions of Section 5 or Section 14 of the Limitation Act.

The said judgment follows the judgment of the Supreme Court in the case of *Prakash Jain versus Marie Farnandes* reported in *AIR 2003 SC 4591* which in turn holds that the competent authority is not a Court and hence does not have power to condone the delay.

3.28) Since the judgment of *Naranji Bhimji Family Trust, Nagpur* (supra) relied upon the judgment of *Prakash Jain*, one has to look into the facts of the said judgment of the Supreme Court. Again, in *Prakash Jain*, it was the appeal filed by a tenant, wherein the competent authority initially condoned the delay in filing the application for leave to defend but the said order was subsequently set aside by the Bombay High Court. The proceedings **arises** out of Leave and Licence Agreement. Supreme Court in the said judgment held that the competent authority established under Chapter VIII of the Maharashtra Rent Control Act could not be considered to be a court for availing the powers under the Limitation Act, 1963. The said finding restricted to the competent authority established under Chapter VIII and not to the officer appointed by the State Government under Section 44(2) of the Maharashtra Rent Control Act, who is the Additional Commissioner in this case. In a similar set of facts, this Hon'ble Court followed the view of Prakash Jain in *Sunanda Associate versus Ajit Kisanlal, 2005 (3) Mh.L.J. 362*, where the question was

again about condonation of delay by the competent authority in condoning delay in filing the leave to defend u/S. 43 of the Maharashtra Rent Control Act, 1999.

3.29) Therefore, the judgment of Naranji Trust, Nagpur, following the judgment of Supreme Court in *Prakash Jain* (supra), has interpreted the Section 44 in that particular manner. In my view, such an interpretation for a harmonious consideration of the scheme of Chapter VIII, which is actually introduced for the purpose of a landlord's benefit cannot be read into, (as the landlord whose benefit the special enactment has been done), the revisional authority can't condone the delay in filing the revision by the landlord. Therefore, in my view, the ratio of the judgment of *Prakash Jain* and the judgment of *Naranji Trust* of Nagpur High Court, which dealt with an appeal filed by the tenants will not be applicable to the facts of the present case where there is a landlord who had come into the revision before the competent authority.

3.30) There is also one difference between the Bombay Rent Act and the Maharashtra Rent Control Act as far as revisional authority is concerned. Under the Bombay Rent Act, the revisional authority was the High Court and under the Maharashtra Rent Control Act, that power of revision is now given to an authority, which is the Additional

Commissioner, who in real sense can't be called as a Court. Therefore, something which is available to a special category of landlord being into Armed Forces under the Bombay Rent Act, where this Court is to hear the Revisions. By introduction of Maharashtra Rent Control Act, that power can't be taken away from that particular category of landlord of seeking an application to condone delay. It is material to note here that in the present proceeding, the delay was only of 12 days in filing the revision before the competitive authority and the revisional authority considering the judgment of Naranji Trust of Nagpur and the judgment of the Supreme Court in *Prakash Jain* declined to condone the delay. Hence, in my view, it can't be held that a revision filed by a landlord, the provisions of the Limitation Act can't be applied. In the judgment of *Naranji Trust* (supra) all the concerned provisions of Maharashtra Rent Act are not considered. The judgments discussed by me in earlier paragraphs are not considered in the said judgment. Hence, it will be advantageous if the issue is heard by a Larger Bench.

3.31) Therefore, in view of the importance of the question involved, I am formulating question for determination by an appropriate Bench of this Court.

3.32) **“Whether the revisional authority under Section 44 of the**

Maharashtra Rent Control Act, 1999 has power to condone a delay if the revision is filed by a landlord beyond a period of 90 days ? ”

3.33) The Registry to place papers of the proceedings before The Hon'ble The Chief Justice for consideration and for placing the above formulated question of law for consideration before a Larger Bench.

3.34) This Court also expresses its appreciation for the valuable assistance and contribution rendered by the learned *Amicus Curiae*, Mr. Girish Godbole, Senior Counsel assisted by Mr. Kaustubh Thipsay, Advocate.

[RAJESH S. PATIL, J.]