IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.136 OF 2026

Ratnadeep Shankar Narkar ...Applicant

V/s.

M/s. Ish Homes Private Limited and Ors. ...Respondents

Mr. Pradeep Thorat *i/b. Mr. Tanvir Shaikh for the Applicant.*

Mr. Vishal Kanade *i/b. Mr. Javed Akhtar Khan for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

Reserved on: 20 APRIL 2026.

Pronounced on: 4 MAY 2026.

Judgment:

1) The Applicant has filed the present Revision Application challenging the judgment and decree dated 22 January 2026 passed by the Appellate Bench of the Small Causes Court dismissing Appeal No.302 of 2019 and confirming the decree of the Trial Court dated 6 July 2019 passed in R.A.E. & R. Suit No.643/1132 of 2008. The Trial Court had decreed the Suit filed by Respondent No.1-Plaintiff on the grounds of unlawful subletting and default in payment of rent. The Trial Court has directed Applicant/Defendant No.2 to handover possession of the suit properties to the Plaintiff with further direction for payment of arrears of rent as well as enquiry into *mesne* profits.

2) Room No. R/4, House No.411/Back, Ground floor, Kadri Mansion, Veer Savarkar Marg, Prabhadevi, Mumbai- 400 025 is the '**suit premises**'. Building-Kadri Mansion was owned by the earlier owners, who had apparently inducted late Mr. Ballaram Hullaji as monthly tenant in respect of the suit premises. Respondent No.1 /Plaintiff acquired ownership in respect of the land and the building Kadri Mansion vide four Deeds of Conveyance dated 30 September 2006 and 10 October 2006. After acquiring ownership in respect of the building, the Plaintiff found Defendant No.2-Mr. Ratnadeep Shankar Narkar to be in possession of the suit premises in which late Mr. Ballaram Hullaji was the tenant. Plaintiff alleged that Defendant No.2 was inducted as unlawful sublettee in respect of the suit premises. An allegation of default in payment of rent was also raised. The Plaintiff also demanded arrears of rent vide Notice dated 24 February 2007. After failure on behalf of the Defendants to pay the rent, Plaintiff instituted R.A.E. & R. Suit No.643/1132 of 2008 in the Court of Small Causes impleading 'heirs and legal representatives' of late Ballaram Hullaji as Defendant No.1 and Mr. Ratnadeep Shankar Narkar as Defendant No.2(Applicant). Later, the Plaint was amended by impleading the legal heirs of Defendant No.1. However, it appears that heirs of Defendant No.1 did not appear in the Suit nor filed written statement. The Applicant filed written statement resisting the Suit stating *inter alia* that Defendant No.1 had assigned and transferred tenancy rights in the suit property in November-1995 with the consent of erstwhile owners. However, on account of disputes between the owner and on account of appointment of Court Receiver, transfer of the tenancy rights could not be documented. That the rent in respect of the suit property was always paid by Defendant No.2. That even after receipt of

notice dated 24 February 2007, the alleged arrears of rent were paid by Defendant No.2.

3) Based on the pleadings, the Trial Court framed issues relating to unalwful subletting, default in payment of rent and cause of wastage to the suit premises. The parties led evidence in support of their respective claims. The Plaintiff examined its directors and relied on several documents. Defendant No.2 examined himself and also relied on several documents. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the Suit by accepting the grounds of unlawful subletting and default in payment of rent.

4) The Applicant/Defendant No.2 filed Appeal No.302 of 2019 before the Appellate Bench of the Small Causes Court. In his Appeal, the Applicant/ Defendant No.2 filed Applications at Exhibits-22, 23 and 71 for producing additional evidence and documents under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (**the Code**). The Applicant also filed Application at Exhibit-72 seeking permission for filing additional compilation of documents of the Trial Court. He also filed Application at Exhibit-67 for framing issue on the point of limitation. The Appeal was heard by the Appellate Bench and during the course of hearing of the Appeal, it appears that Application at Exhibit-71 for production of additional evidence was rejected vide order dated 22 January 2026. Similarly, the Application at Exhibit-72 for filing of additional compilation of the documents before the Trial Court was also rejected by separate order dated 22 January 2026. The Application at Exhibit-67 for framing additional issue of limitation was partly allowed by order dated 22 January 2026 and additional issue relating to limitation was framed.

On 22 January 2026 the Appellate Court proceeded to dismiss the Appeal No.302 of 2019 preferred by the Applicant by answering the issue of limitation in affirmative, in favour of the Plaintiff and against the Applicant. The Appellate Court also rejected the ground of default in payment of rent. The Appellate Court however, accepted the ground of unlawful subletting and accordingly upheld the decree of eviction passed by the Trial Court. Aggrieved by the decree passed by the Appellate Court, the Applicant has filed the present Revision Application.

5) Mr. Thorat, the learned counsel appearing for the Applicant submits that the Appellate Court has erred in not deciding Applications at Exhibits-22 and 23 for production of additional evidence under Order XLI Rule 27 of the Code. That the Applicant had filed three Applications for production of additional evidence being Exhibits-22, 23 and 71. However, only one Application at Exhibit-71 is considered and rejected by the Appellate Court and that there is no decision on Applications at Exhibits-22 and 23. That therefore, the entire Appeal deserves to be remanded for fresh decision on account of non-consideration of Applications at Exhibits-22 and 23. He relies on judgment of the Apex Court in ***Jatinder Singh and Another V/s. Mehar Singh and Others***[1] and ***Malayalam Plantations Limited V/s. State of Kerala and Another***[2].

6) Mr. Thorat further submits that the Appellate Court has erred in not granting opportunity to the Applicant to lead evidence on additional issue of limitation. That the additional issue relating to limitation was framed while deciding the Appeal and the said issue is answered in the affirmative without even granting any opportunity to the Applicant to

1 (2009) 17 SCC 465
2 (2010) 13 SCC 487

lead evidence in respect of the additional issue. He relies on provisions of Order XLI Rule 25 of the Code in support of his contention that it was incumbent for the Appellate Court to refer the matter to the Trial Court for taking additional evidence. That, therefore, the decree of the Appellate Court is in violation of provisions of Order XLI Rule 25 of the Code.

7) Mr. Thorat further submits that the Trial and the Appellate Courts have erroneously accepted the ground of unlawful subletting ignoring the position that the Suit was barred by limitation. He submits that the Applicant is inducted in the suit premises in November-1995 and that therefore the Suit filed alleging unlawful subletting on 27 May 2008 was clearly barred by limitation. He submits that in ***Bakul Nandlal Gandhi V/s. Mrs. Smita Pradip Bhatia***[3]***,*** this Court has held that Suit for eviction under Article 66 of the Limitation Act, 1963 needs to be filed within a period of 12 years from the act of unlawful subletting. He also relies on judgment of this Court in ***Taherbhai T. Poonawala & Ors. V/s. Hamid H. Patel (deceased by LRs) and Ors.***[4] and of Supreme Court in ***Shakuntala S. Tiwari V/s. Hemchand M. Singhania*** [5], ***Ganpat Ram Sharma and Others V/s. Gayatri Devi*** [6]***.*** He therefore submits that Plaintiff's Suit ought to have been dismissed by the Appellate Court after framing the issue of limitation.

8) Mr. Thorat further submits that the Applicant /Defendant No.2 was erroneously branded as unlawful sub-tenant ignoring the position that his name figures in the list of tenants appended to Deeds of Conveyance

3 Civil Revision Application No.232 of 2017 decided on 27 January 2026
4 AIR 2007 Bombay 80
5 1987 (2) Bom.C.R. 480
6 (1987) 3 SCC 576

executed in favour of the Plaintiff. That tenancy rights have been transferred by Defendant No.1 with the consent of the earlier landlords. That on account of pendency of disputes between the earlier owners and the building was *custodia legis*, the owners were not able to record transfer of tenancy. That therefore there is no element of subletting in the present case.

9) Lastly, Mr. Thorat submits that the Suit was instituted against Defendant No.1, who was a dead person in the year 1986. That the Suit filed against a dead person is not maintainable and ought to have been dismissed. On the above broad submissions, Mr. Thorat prays for setting aside the impugned decree of eviction.

10) Mr. Kanade, the learned counsel appearing for Respondent No.1/Plaintiff opposes the Revision Application submitting that concurrent findings of fact are recorded in respect of ground of unlawful subletting by the Trial and the Appellate Courts. That the Applicant flooded the Appellate Court with as many as five applications and chose to argue only three out of those 5 applications. That two Applications for production of additional evidence were not argued before the Appellate Court. That the Application at Exhibit-71 for production of additional evidence has been decided by the Appellate Court. That if the Applicant tucks in numerous applications and does not the press the same at the time of hearing of the appeal, decree passed in the appeal cannot be sought to be faulted. That even otherwise, Applications at Exhibits 22 and 23 were completely misplaced and were filed only for delaying the proceedings. On the issue of limitation with regard to ground of unlawful subletting, he submits that the Appellate Court has rightly relied upon

judgment of this Court in ***Shree Durga Trading Co. V/s. Ateeq Anwar Agboatwal and anr.***[7] He distinguishes the judgment relied upon by Mr. Thorat in ***Bakul Nandlal Gandhi*** (supra) submitting that the judgment is rendered without noticing the ratio of the judgment in ***Shree Durga Trading Co.***. He submits that that rest of the judgments relied upon by Applicant are already considered by this Court in ***Shree Durga Trading Co.***

11) Mr. Kanade further submits that the list appended to the Conveyance Deeds contains names not only of 'tenants' but also of 'occupants'. That this issue is no more *res integra* and covered by decisions of this Court in ***Ambavi Raghu Patel and Anr. V/s. M/s. Isha Homes Pvt. Ltd. and Anr.***[8] and ***Pradeep Dattatray Gandhi V/s. M/s. Ish Homes Private Ltd. and Anr.***[9]

12) So far as the ground for Suit being filed against a dead person is concerned, Mr. Kanade submits that legal heirs were brought on record and Suit did not continue against a dead person. He would accordingly pray for dismissal of the Application.

13) Rival contentions raised on behalf of the parties, now fall for my consideration.

14) The Suit was filed for eviction of the head tenant (Defendant No. 1) and the inductee (Defendant No. 2) essentially raising three grounds of (i) unlawful subletting, (ii) default in payment of rent and (iii) causing

7 SCC OnLine Bom 3065
8 Civil Revision Application No.65 of 2023, decided on 9 September 2024.
9 Civil Revision Application No.79 of 2023, decided on 9 September 2024

wastage to the suit premises. The Trial Court accepted the grounds of unlawful subletting and default in payment of rent and rejected the third ground of causing wastage to the suit premises. The Appellate Court has rejected the ground of default in payment of rent and has upheld the decree on the solitary ground of unlawful subletting. Thus, *qua* the ground of unlawful subletting, there are concurrent findings recorded by the Trial and the Appellate Courts.

15) Applicant's main attack on the decree before me is the failure on the part of the Appellate Court to decide the Applications at Exhibits 22 and 23 for production of additional evidence. As observed above, the Applicant went on flooding the Appellate Court with numerous applications. It filed as many as five Applications in the Appellate Court, four out of which were for production of additional evidence/material. Three Applications were filed for production of additional evidence, and the fourth application was also filed for production of additional material in the form of documents of the Trial Court. The fifth Application was filed for framing of additional issues. Three out of those five Applications have been decided by the Appellate Court. The Application for production of additional evidence at Exhibit-71 has been rejected while hearing the Appeal on 22 January 2026. Application at Exhibit-72 for production of three documents is also rejected while hearing the Appeal on 22 January 2026. However, the application (Exhibit-67) for framing additional issue relating to limitation has been partly allowed by order dated 22 January 2026 and the Appellate Court proceeded to frame additional issue relating to limitation.

16) Applicant complains that his two applications at Exhibits 22 and 23 have not been decided by the Appellate Court and that therefore the Appeal must be remanded to the Appellate Court for fresh decision.

17) This Court does not appreciate the conduct of the Applicant in swamping the Appellate Court with as many as five applications, four out of which were filed for the same purpose of production of additional material /evidence. If any vital piece of evidence was needed to be produced before the Appellate Court under Order XLI Rule 27 of the Code, the entirety of such evidence ought to have been produced by filing a single application. However instead of doing so, the Applicant deliberately filed four applications for same purpose and is now complaining that since there is no decision on two out of those four applications, the Appeal must be remanded for fresh decision. I have little doubt in my mind that filing of four separate applications before the Appellate Court by the Applicant was aimed at delaying decision of the Appeal and also for creating a possible ground for seeking remand of the Appeal. The conclusion is reached after considering the manner in which the four applications were filed, which is discussed in the paragraph to follow.

18) I now proceed to examine the purpose for which the four Applications were filed by the Applicant:

(i) The ***first*** Application dated 23 December 2021 at Exhibit 22 was filed under Order XLI of Rule 27(1) of the code, by which the Applicant desired to produce certified copy of the cross-

examination of witness in R.A.E. & R. Suit No.637 of 2007 conducted on 27 June 2019. Thus, evidence led by the Plaintiff in an altogether different Suit was sought to be relied upon by the Applicant directly at the appellate stage. Upon being queried, Mr. Thorat submits that the application was filed to rely upon admissions given by the Plaintiff's witness to the effect that the list appended to Deeds of Conveyance contained names of 'tenants'.

(ii) In quick succession and after passage of just 13 days, the Applicant filed ***second*** application on 6 January 2022 at Exhibit-23 under Order XLI, sub-rule 1(aa) and (b) of Rule 27 of the Code for production of affidavit dated 9 November 1995 allegedly relating to assignment of tenancy in Applicant's name, copies of alleged rent receipts issued by the Court Receiver, copies of electricity bill, copy of ration card, copies of telephone bills and copy of emails relating to alleged negotiations for settlement of Suit with the Plaintiff and ID card issued by Election Commission of India.

(iii) On 27 November 2025, the Applicant filed ***third*** application at Exhibit-71 for production of additional evidence seeking to produce death certificate of Defendant No.1 and receipts showing transfer of electricity meter.

(iv) The Applicant also filed ***fourth*** Application at Exhibit-72 for production of copy of application for amendment of Plaint filed by the Plaintiff, report of the Court Receiver dated 5 August 1991 and copy of order passed by the Appellate Bench upholding the Trial Court's order rejecting amendment.

This is how the Applicant went on a spree and filed as many as 4 applications for the same purpose of production of additional evidence/material.

19) The Appellate Bench has dealt with and has rejected Applications at Exhibits-71 and 72, which were apparently filed close to the date of hearing of the Appeal. It is the contention of Respondent No.1-Plaintiff that the Applicant never pressed the Applications at Exhibits-22 and 23 at the time of hearing of the Appeal and the said Applications remained unnoticed by not only the Court but also by the parties. The Applicant disputes this position and contends that in the written submissions, attention of the Appellate Court was invited to Applications at Exhibits 22 and 23 also.

20) In my view, criticism on the Appellate Court by the Applicant for not deciding Applications at Exhibits- 22 and 23 is wholly unjustified. The Applicant must blame himself for non-decision of Applications at Exhibits 22 and 23. As observed above, all the four applications were filed for the same purpose of production of additional documents and evidence. Production of additional evidence before the Appellate Court is a special and exceptional opportunity recognized under Order XLI Rule 27 of the Code and the same cannot be resorted to routinely or as a matter of right. The Appellate Court is expected to decide the Appeal by marshaling and reappreciating the evidence on record before the Trial Court. Ordinarily, it is not expected to judge findings of the Trial Court by relying on new material. Order XLI Rule 27 of the Code essentially opens with a caveat that the parties to an appeal shall not be entitled to produce additional evidence in the Appellate Court. However certain

exceptional circumstances are recognised under which it is permissible for the Appellate Court to take into consideration additional evidence not produced before the Trial Court. Order XLI Rule 27 provides thus:

> **27. Production of additional evidence in Appellate Court.—**
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> (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —
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> > (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
> > (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
> >
> > (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
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> (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

21) Thus, only in a case where one out of the three eventualities exist, the Appellate Court can permit leading of additional evidence. The three exceptional circumstances are where (i) the Trial Court has refused to admit evidence which ought to have been admitted, (ii) additional evidence was not in the knowledge of the parties and (iii) where the Appellate Court requires any document to be produced or witness to be examined for pronouncement of judgment or for any other substantial cause. Such exceptional opportunity cannot be permitted to be exercised causally by filing four applications. There has to be some seriousness when additional evidence is sought to be produced directly before the Appellate Court. When the Appellant believes that a vital piece of

evidence has remained to be produced before the Trial Court and that the same must be shown to the Appellate Court, he/she must gather all the material (additional evidence), which existed when Trial Court decided the suit and file the same at one go. The liberty to file application under order XLI Rule 27 cannot be misused by filing multiple applications as different intervals by seeking to produce more and more material as the Applicant grows wiser with passage of each day.

22) In the present case, the Applicant has clearly misused the liberty available under Order XLI Rule 27 of the Code by filing four applications for the same purpose and now complains that the Appeal must be reheard because two out of those four applications, which remained tucked in the records of the Appellate Court, remained unnoticed and undecided.

23) While deciding Applications at Exhibits 71 and 72, the Appellate Court has recorded a finding that ingredients of Order XLI Rule 27(1) (a) (aa) or (b) are not satisfied in the present case. If Applications at Exhibits-22 and 23 were to be pressed by the Applicant before the Appellate Court, I am sure similar findings would have been recorded by the Appellate Court. All the extra material that was sought to be produced by the Applicant directly before the Appellate Court was within his knowledge and most of the documents were in his custody. It is not the case that those documents were not in his knowledge or custody. The Applicant flooded the records of the Appellate Court with numerous applications and the two applications at Exhibits-22 and 23, slipped in the records, went unnoticed by the Appellate Court. The Plaintiff complains that the Applicant deliberately did not press Applications at

Exhibits-22 and 23 for the purpose of creating a ground before this Court for seeking remand on proceedings by the Appellate Court.

24) The Applicant cannot be permitted to take benefit of his own wrong for the purpose of seeking remand of the proceedings. The Applicant abused the process of law by filing as many as four Applications for leading of additional evidence. This Court cannot come to the assistance of such a litigant by becoming party to his dishonest plan of dragging the eviction proceedings. The Suit was filed in the year 2008 and by now period of 18 long years has elapsed. Remanding the proceedings at this stage before the Appellate Court for completing the formality of deciding Applications at Exhibits-22 and 23 would only delay eviction of the Applicant from the suit premises. Pendency of proceedings has already enabled the Applicant to use the premises for 18 long years. Unlawful subletting to the Applicant is writ large on the face of the record, which is discussed in the latter part of the judgment.

25) Reliance by Mr. Thorat on judgment of this Apex Court in ***Malayalam Plantations Limited*** (supra) is inapposite. In case before the Apex Court, the State Government had filed application in its Appeal for production of additional documents to demonstrate that the said documents would have rejected the entire claim of Malayalam Plantations Limited. While emphasizing the duty of the Appellate Court to decide Application under Order XLI Rule 27 of the Code, in paragraph 17 of the judgment, the Apex Court has also highlighted the position that additional evidence cannot be for filling up the lacunae in evidence and the production of additional evidence must be in the interest of justice. The Apex Court held in paragraphs 15 to 17 as under:-

> 15) In view of the above provision, in our opinion, when an application for reception of additional evidence under Order 41 Rule 27 of CPC was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in Jatinder Singh & Anr. Vs. Mehar Singh & Ors. AIR 2009 SC 354 and Shyam Gopal Bindal and Others vs. Land Acquisition Officer and Another, (2010) 2 SCC 316.
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> 16) If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature.
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> 17) It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case. Adducing additional evidence is in the interest of justice. Evidence relating to subsequent happening or events which are relevant for disposal of the appeal, however, it is not open to any party, at the stage of appeal, to make fresh allegations and call upon the other side to admit or deny the same. Any such attempt is contrary to the requirements of Order 41 Rule 27 of CPC. Additional evidence cannot be permitted at the Appellate stage in order to enable other party to remove certain lacunae present in that case.

26) In the present case, the question is whether Applications at Exhibits-22 and 23 were filed by the Applicant in furtherance of interest of justice. Answer to the question is obviously in the negative. By filing as many as four Applications for adducing additional evidence the Applicant has indulged in gross abuse of process of law and was in fact creating a hindrance in the interest of justice. Therefore the judgment in ***Malayalam Plantations Limited*** (supra) does not assist the case of the Applicant.

27) In ***Jatinder Singh*** (supra), which judgment is considered by the Apex Court in ***Malayalam Plantations Limited*** (supra), the High Court had failed to take notice of application under Order XLI Rule 27 of the Code while deciding the second appeal. The case did not involve filing of multiple applications for leading additional evidence. The judgment therefore can be distinguished on facts and does not assist the case of the Applicant. In my view, therefore, it is not necessary to remand the appeal for fresh decision only on account of appellate court's failure to decide Applications at Exhibits 22 and 23, which were not only baseless but were filed in gross abuse of process of law.

28) Mr. Thorat has sought to criticize the Appellate Court by contending that the provisions of Order XLI Rule 25 of the Code are violated by answering the additional issue of limitation on the same day of framing the same. As observed above, the Application at Exhibit-67 is allowed by the Appellate Court on 22 January 2026 framing additional issue relating to limitation and on the same day, the final judgment in the Appeal is rendered answering the issue of limitation in the affirmative. Mr. Thorat has relied upon Order XLI Rule 25 of the Code, which provides thus:

> **25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—**
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> Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

> and such Court shall proceed to try such issues and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.

29) In my view, provisions of Order XLI Rule 25 of the Code cannot be read to mean that in every case where the Appellate Court frames additional issue, it is mandatory to refer the same for trial to the Trial Court. In every case, the issue of limitation need not be a question of fact. It can also be a pure question of law. In a given case, there can already be sufficient evidence to decide the additional issue framed. In the present case, decision of issue of limitation did not require leading of evidence. Transfer of tenancy by Defendant No. 1 to Defendant No. 2 in November-1995 is an admitted fact which is not disputed by the Applicant/Defendant No. 2. Therefore, the issue of limitation *qua* the ground of subletting is a pure question of law. As discussed in the latter part of the judgment, this Court has already held that the act of subletting gives rise to a continuous cause of action and accordingly, the issue of limitation has been answered by the Trial Court by taking into consideration the law on the subject. Therefore, for deciding the issue of limitation, leading of additional evidence was not necessary. In fact, under Order XLI Rule 24 of the Code, if the Appellate Court arrives at a conclusion that evidence on record is sufficient to enable it to pronounce the judgment it can resettle the issues and finally determine the Suit. Therefore, in every case, it is not necessary to make an order of remand to the Trial Court for inviting findings of the Trial Court on additional issue framed by the Appellate Court. The objection in this regard, as sought to be raised by the Applicant, therefore deserves rejection.

30) Coming to the aspect of limitation in respect of ground of unlawful subletting, it is contended by the Applicant that his induction in the suit premises took place in November-1995 and therefore the Suit instituted on 27 August 2008 was barred by limitation under Article 66 of the Limitation Act, 1963, under which any suit for recovery of possession was required to be filed within a period of 12 years of forfeiture of tenancy. Reliance is placed by the Applicant on judgment of the Apex Court in ***Ganpat Ram Sharma*** and ***Shakuntala S. Tiwari*** (supra). Both the judgments were relied upon before this Court in ***Taherbhai T. Poonawala*** (supra). This Court has distinguished the judgment in the case of ***Taherbhai T. Poonawala*** (supra) in ***Shree Durga Trading Co.*** (supra) by holding in paragraphs 17 and 18 as under:

> 17) It appears that the learned Single Judge of this Court in ***Shri. Taherbhai T. Poonawala*** has differed with the view taken by the Gujarat High Court that in case of illegal subletting there would be continuous cause of action and has held that suit must be brought within 12 years of act of subletting under Article 66 of the Limitation Act. However, it appears that provisions of Section 22 of the Limitation Act were not brought to the notice of this Court. Also, the case involved peculiar facts where the Appellate Court therein had rendered a finding that though tenant had entered into the said tenancy agreement, he never stayed in the suit premises, right from inception. This Court has relied on two judgments of the Apex Court. The issue before the Apex Court in its judgment in ***Ganpat Ram Sharma and others Versus. Smt. Gayatri Devi*** was about application of Article 67 or Article 113 in respect of the suit for recovery of possession from the tenant. Similarly, was the case in the judgment of the Apex Court in ***Smt. Shakuntala S. Tiwari Versus. Hem Chand Singhania***. Thus, in both the judgments of the Apex Court relied upon by the learned Single Judge in Shri. Taherbhai T. Poonawala, the issue was not about the act of subletting giving rise to continuous cause of action. In my view therefore, the judgment in Shri. Taherbhai T. Poonawala, rendered in peculiar facts of that case where the tenant had not occupied the premises even for a single day, cannot be read in support of an absolute proposition of law that in every case, the injury arising out of act of subletting would be complete on the day when the subletting first occurs and that such

> an act would not constitute continuous cause of action under Section 22 of the Limitation Act.
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> 18) In my view, the act of unauthorised subletting by a tenant constitutes a continuing breach of contract and therefore period of limitation would begin to run so long as the act of subletting continues. It is another case where the act of subletting comes to an end and Plaintiff fails to file the suit for recovery of possession within 12 years of reversal of act of subletting. In the present case, it is conclusively proved that Defendant No.1 had allowed Defendant No. 2 to conduct business in the suit premises till the year 2000. Therefore, the suit filed in the year 2001 cannot be treated to be barred by limitation.

31) In ***Shree Durga Trading Co.*** (supra) this Court noted provisions of Section 22 of the Limitation Act and after taking into consideration the judgment of the Supreme Court in ***Balakirshna Savalram Pujari Waghmare V/s. Shree Dnyaneshwar Maharaj Sansthan,***[10] this Court held in paragraphs 11 to 13 of the judgment as under:

> 11) Though Dr. Thorat has submitted that Article 67 would be attracted in the present case and not Article 66, in my view, it is not necessary to enter into that debate. What needs to be considered is whether the cause of action for recovery of possession on account of act of subletting is continuous in nature. The concept of continuous wrong is traceable to Section 22 of the Limitation Act, reading as under:
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> > **22. Continuing breaches and torts**.- In case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.
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> 12) While considering a *pari materia* provision, i.e., Section 23 of the Limitation Act, 1908, the Supreme Court in ***Balakirshna Savalram Pujari Waghmare Versus. Shree Dnyaneshwar Maharaj Sansthan,*** reported in AIR 1959 SC 798, laid down the law that the very essence of a continuing wrong is that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury; however, if wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. The Court held thus:

10 AIR 1959 SC 798

31. It is then contended by Mr Rege that the suits cannot be held to be barred under Article 120 because Section 23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong under Section 23? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued. Can it be said that, after the appellants were evicted from the temple in execution of the said decree, the continuance of their dispossession was due to a recurring act of tort committed by the trustees from moment to moment? As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of 23 in such a case. That is the view which the High Court has taken and we see no reason to differ from it.

(emphasis added)

> 13) Applying the above ratio to the facts of the present case, the wrong committed by Defendant No. 1 in subletting the premises continued and thereby the injury caused to Plaintiffs also continued. This is not a case where the wrongful act of Defendant No. 1 in subletting the premises resulted in injury which was complete and only damages resulting out of such injury continued. Therefore, in a case involving subletting, a continuous cause of action would arise so long as the act of subletting continues.

32) Thus, this Court has already taken a view in ***Shree Durga Trading Co.*** (supra) that an act of subletting constitutes a continuous cause of action for the landlord to file a Suit for recovery of possession of the tenanted premises and that the period of limitation would begin to run so long as the act of subletting continues.

33) Mr. Thorat has relied upon judgment of this Court in ***Bakul Nandlal Gandhi*** (supra). It appears that attention of this Court was not invited to judgment in ***Shree Durga Trading Co.*** (supra) while deciding ***Bakul Nandlal Gandhi.*** Also, in ***Bakul Nandlal Gandhi*** this Court has essentially upheld the claim of lawful protected sub-tenancy and has taken into consideration the ground of limitation only as an additional facet. The occupant therein is held to be a lawful sub-tenant, whose sub-tenancy was found to be protected. This is clear from the following findings recorded in paragraphs 24 to 26 of the judgment:

> **24. Even if it is assumed that sub tenancy of the Kiran Impex Traders through partner-Nandlal Gandhi is not protected**, then also cause of action, if any, arose in the year 1956 more particularly on 26th June 1956, when partnership Agreement was executed between Jethalal Jajal and Nandlal M. Gandhi constituting partnership-Kiran Impex Traders and thereafter on 14th December 1956 when said Jethalal Jalal retired from the partnership firm. The position on record clearly shows that the earlier landlords i.e. Joshis took into consideration the execution of Partnership Deed on 26th June 1956, and thereafter issued rent receipt in the manner as "Jethalal V. Jalal-Kiran Impex Traders". Thus, the

> erstwhile tenant agreed for the sub-tenancy. Thereafter the Deed of Dissolution was executed on 14th December 1956, by which the said Jethalal Jajal retired from suit premises and the tenancy was taken over by Nandlal Gandhi. These factual aspects are well established. Thus, it is clear that the cause of action, if any, arose on 26th June 1956/14th December 1956. It is required to note that the original landlords never took any action against the Defendant No.1-Nandlal Gandhi. The action was taken by the new landlord-Chandrashi Chaturbhoy in the year 2001 i.e. after a period of 45 years.
>
> 25. As per Article 66 of the Limitation Act, to recover possession of immovable property, based on forfeiture or breach of condition, the period begins when the forfeiture is incurred or there is breach of condition and limitation is 12 years. **Thus, even assuming that the sub-tenancy is not protected**, then also as cause of action arose on 14th December 1956 and therefore the Suit which has been filed by the new landlord on 10th September 2001, who has purchased the property on 7th November 1998 is hopelessly barred by limitation. This reasoning is additional reasoning assuming that the sub-tenancy is not protected by 1959 Notification or by 1987 Amendment to the Bombay Rent Act.
>
> 26. **In any case, as already set out herein above, the factual position on record clearly shows that sub-tenancy of Kiran Impex Traders, through Nandlal Gandhi is protected sub-tenancy.**
>
> *(emphasis added)*

34) Thus, in ***Bakul Nandlal Gandhi*** (supra) this Court was convinced that the person sought to be branded as sublettee was actually a protected sub-tenant on account of induction taking place in the year 1956, i.e. before the datum line of 1 February 1973 prescribed under Section 15A of the The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The judgment is thus, rendered in the peculiar facts of that case. Apart from not noticing the ratio of the judgment in ***Shri Durga Trading Co.*** (supra) attention of this Court was also not invited to provisions of Section 22 of the Limitation Act. In my view, therefore, the judgment of this Court in ***Bakul Nandlal Gandhi*** rendered in the peculiar facts of that case, is clearly distinguishable and cannot be cited in support of an abstract proposition that non filing of Suit for eviction

within 12 years of induction of sublettee would virtually convert a sublettee into an authorised occupant of the tenanted premises.

35) Also, the judgment in ***Shri Durga Trading Co.*** is followed in the recent decision of this Court in ***Sujata Shekhar Shetty and Ors. V/s Vivek Madhavlal Pittie*** [11]. Therefore, the plea of limitation sought to be raised by the Applicant deserves rejection.

36) So far as the objection of non-maintainability of the Suit on account of the same being filed against a dead person is concerned, it is seen that the Plaint was amended and legal heirs of Defendant No.1 were brought on record. Therefore, it cannot be said that the Suit was filed against a dead person. As on the date when the Suit was decided, the same was not against any dead person. The objection in this regard therefore deserves rejection.

37) The last ground of the Applicant being a tenant on account of reflection of his name in the list appended to the Deeds of Conveyance is again totally misplaced. Perusal of the clause 13 of the Deed of Conveyance dated 15 July 2006 indicates that the same refers to both 'tenants' as well as 'occupants'. Clause 13 of the Deed of Conveyance reads thus:

> 13. The said property is fully occupied by the tenants and occupants as per list attached hereto and marked 'C'

This aspect is again no more *res integra* and in ***Ambavi Raghu Patel*** and ***Pradeep Dattatray Gandhi*** (supra) this Court has concluded in similar Suits relating to the premises in the same building that mere reflection

11 CRA 631 decided 27 March 2026

of names of the occupants in the lists appended to the Conveyance Deeds does not elevate the occupants to the status of tenants. This Court has held in paragraphs 7 and 8 of the judgment in ***Ambavi Raghu Patel*** as under:

> 7) Mr. Damle strenuously relies upon the Conveyance Deed executed in favour of the Plaintiff in the year 2006 to demonstrate that in the list of tenants, name of M/s. Jai Jalaram Stationary was specifically reflected. He would submit that the Plaintiff thus accepted the position that M/s. Jai Jalaram Stationary, in capacity as partnership firm, is the real tenant in respect of the suit premises. However, it is an admitted position that the rent receipt in respect of the suit premises continues in the name of the first Defendant and not in the name of M/s. Jai Jalaram Stationary.
>
> 8) Mr. Kamat has also clarified the situation by relying on Clause 13 of the recitals in which it is stated that the list of names in Annexure – C to the Conveyance Deed is not only in respect of tenants but also covered occupants. It thus appears that the name of M/s. Jai Jalaram Stationary in Annexure – C to the conveyance is in capacity as occupant and not tenant.

Thus, the Applicant cannot be held to be a tenant merely on the strength of reflection of his name in the list appended to the Deed of Conveyance.

38) Considering the overall conspectus of the case, I am of the view that no case is made out for interference in the concurrent findings recorded by the Trial and Appellate Courts on the issue of unlawful subletting. Civil Revision Application is devoid of merits. It is accordingly dismissed without any order as to costs.

[SANDEEP V. MARNE, J.]

21) After the judgment is pronounced, Mr. Thorat prays for stay of the judgment for a period of six weeks. The request is opposed by the

learned counsel appearing for the Respondents. Considering the fact that there is no interim order operating in favour of the Applicant, there is no question of stay of the judgment. The request is accordingly rejected.

[SANDEEP V. MARNE, J.]