

(2024) 12 BOM CK 0008
In the Bombay High Court
Case No : Writ Petition No. 6980 Of 1998

Laxman Pralhad Ganaji Dayme

APPELLANT

Vs

Vinayak Mahadeo Pradhan And Anr

RESPONDENT

Date of Decision : 02-12-2024

Acts Referred:

Constitution of India, 1950 — Article 227

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(a), 13(1)(b)

Transfer of Property Act, 1882 — Section 108(o)

Citation : (2024) 12 BOM CK 0008

Hon'ble Judges : Sandeep V. Marne, J

Bench : Single Bench

Advocate : S. G. Deshmukh, Poonam Bhosale, Ashutosh Gavnekar, Savita Sawalkar, M/s. Tamhane & Co.

Final Decision : Dismissed

Judgement

Sandeep V. Marne, J

1) This petition is filed challenging the judgment and decree dated 10 November 1998 passed by the II Extra Joint District Judge, Thane dismissing Civil Appeal No.256/1995 and confirming the eviction decree dated 27 March 1995 passed by the II Joint Civil Judge (Junior Division), Thane in Regular Civil Suit No. 250/1991. The Trial Court has decreed the suit by directing the Petitioner-Defendant to handover vacant and peaceful possession of the suit premises to the Plaintiffs within one month.

2) Shop No.3 admeasuring 226 sq.ft situated on the ground floor of the building known as Pradhan Building situated at Municipal House No.54, Tikka No.13, No.66 Tembhi Naka, Thane is the suit premises. Plaintiffs claim to be the owners in respect of the suit building in which the suit premises are situated. Defendant was inducted as a monthly tenant in respect of the suit premises for conducting his business of hair cutting saloon in the name and style of 'Fashionable

Hairdresser' in the suit premises. Plaintiffs agreed to purchase the suit premises by Agreement dated 23 April 1986. Before purchasing the building, Plaintiff No.1, who is a qualified Architect, had conducted site inspection and took measurements. According to the Plaintiffs, Defendant carried out various unauthorised additions and alterations in the suit premises during the year 1990, when the Plaintiffs were travelling. Accordingly, Plaintiffs filed Regular Civil Suit No.250/1991 against the Defendant for recovery of possession of the suit premises on the grounds of erecting permanent structure without landlord's consent, as well as caused injury/damage to the premises and building while carrying out unauthorised additions and alterations. Plaintiffs also claimed encroachment by the Defendant on the common entrance passage, thereby causing nuisance to the Plaintiffs and neighbouring occupiers. Plaintiffs accordingly sought a direction for eviction of the Defendant with further direction to pay an amount of Rs. 20,000/- by way of damages caused and suffered by the Plaintiffs together with interest. The suit was contested by the Defendant by filing Written Statement, inter-alia, denying any work being carried out in the year 1990 as alleged in the plaint. The Defendant thus initially took a defence of denial in respect of any unauthorised additions and alterations. The Defendant filed application for amendment of the Written Statement. Accordingly, Defendant inserted additional averments in para-9 of the Written Statement to the effect that he had applied on 15 December 1985 to Plaintiffs' predecessor-in-title seeking permission to carry out work in the suit premises and by permission in writing dated 2 January 1986 he was permitted to execute the said work. That the additional work was performed by the Defendant much prior to the purchase of the suit property by the Plaintiffs and that therefore the case of the Plaintiffs about additional work being carried out during 9 May 1990 to 5 June 1990 taking advantage of Plaintiffs' absence was totally baseless. This is how the Defendant relied on written permission dated 2 January 1986 allegedly issued by the Plaintiffs' predecessor-in-title.

3) Based on pleadings of the parties, the Trial Court framed issues relating to construction of permanent nature causing destruction to the suit premises, cause of damage of Rs.20,000/- to the Plaintiffs on account of unauthorised additions and alterations, cause of nuisance to Plaintiffs' and occupiers on account of encroachment by the Defendant and Plaintiffs' entitlement to recover possession of the suit premises. Both the parties led evidence in support of their respective claims. Plaintiffs examined Vinayak Mahadeo Pradhan, Plaintiff No.1 as P.W.1 who was cross-examined by the Defendant. Plaintiff also examined Milind Damodar Chaudhari, neighbouring occupier in support of his contention of additions and alterations being carried out in May 1990. Plaintiffs also examined his brother Madhukar Mahadeo Pradhan as P.W.3 in support of his contention that unauthorised work was carried out by the Defendant in May 1990. Defendant examined himself as D.W.1. Defendant also examined, Anwar Shamshuddin Kasam, one of the co-owners of the suit building prior to its purchase by the Plaintiffs' in support of his contention that the work was carried out with the

written permission of the said co-owner. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the suit on 27 March 1995 by answering Issue No.1 in the affirmative holding that Defendant took disadvantage of Plaintiffs' absence in the suit premises and illegally carried out construction of permanent nature and demolitions thereby causing destruction to the suit premises without Plaintiffs' consent. Issue Nos.2 and 3 of Plaintiffs' suffering damages of Rs.20,000/- on account of unauthorised work and Defendant committing encroachment thereby causing nuisance to Plaintiffs and other occupiers were however answered against the Plaintiffs. The Trial Court accordingly directed eviction of Defendant.

4) Defendant filed Civil Appeal No.256/1995 in the Court of II Extra Joint District Judge, Thane challenging the eviction decree dated 27 March 1995. The Appellate Court has however dismissed Civil Appeal No. 256/1995 and has confirmed the eviction decree. Aggrieved by the concurrent decrees passed by the Trial and the Appellate Courts, Petitioners-Defendants have filed the present petition.

5) By order dated 23 December 1998, the petition came to be admitted and execution of the decree was stayed. During pendency of the petition, Original Defendant/Petitioner-Laxman Pralhad Ganaji Dayme has passed away and accordingly his legal heirs are prosecuting the present petition. The petition is called out for final hearing.

6) Mr. Deshmukh, the learned counsel appearing for the Petitioners would submit that the Trial and the Appellate Courts have erred in decreeing Plaintiffs' suit for eviction without appreciating the position that the concerned work has been duly carried out by the Defendant after securing written permission of the erstwhile landlord. He would submit that erstwhile landlord, Anwar S. Kasam issued written permission dated 2 January 1986, which has been marked in evidence at Exhibit-53. That the said permission was for replacement of tiles, plastering of walls, repair of bathroom and installation of rolling shutters. That the said permission is proved by the Defendant by examining D.W.2-Anwar S. Kasam. That the suit building has been subsequently purchased by the Plaintiffs on 24 April 1986. That since work has been carried out in accordance with the written permission of the erstwhile landlord, eviction of the Defendant under the provisions of Section 13(1)(b) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act) was clearly unwarranted. Alternatively, Mr. Deshmukh would submit that none of the works carried out by the Defendant can be treated as 'permanent construction' within the meaning of Section 13(1)(b) of the Bombay Rent Act. He would submit that construction of kitchen platform is specifically permitted under Explanation to Section 13(1)(b). In support of his contention that construction of kitchen platform does not amount to 'permanent construction' or cause of damage or injury to the building, he would rely upon judgment of this Court in Pitambardas Kalyanji Bakotiya Versus. Dattatraya Krishnaji AIR 1981 BOM 388. That this Court has held in

Alisaheb Abdul Latif Mulla Versus. Abdul Karim Abdul Rahman Mulla and others. AIR 1981 Bom 253 that mere erection of a wall in an open bathroom/mori for privacy does not amount to 'permanent construction'. He would rely upon judgment of this Court in Somnath Krishnaji Gangal Versus. Moreshwar Krishnaji Kale and others. 1995 (1) Mh.L.J. 675 in support of his contention that minor repairs carried out in the premises for its beneficial enjoyment does not amount to 'permanent construction'. He would submit that replacement of wooden door by rolling shutter does not amount to 'permanent construction' and would rely upon judgment of this Court in Ratanlal Ramgopal Agarwal and others Versus. M/s. Kurban Hussain Gulamaii Lahri and another 1986 Mh.L.J. 402. He would also rely upon judgment of this Court in Suka Ishram Chaudhari Versus. Jamnabai Ranchodas Gujarathi & Ors. AIR 1972 Bom. 273 in support of his contention that construction of a partition wall also does not amount to 'permanent construction'.

7) Mr. Deshmukh would submit that the Appellate Court has erred in discarding written permission of the erstwhile landlord at Exhibit-53 only on the ground of presence of averment about the same in the original Written Statement and addition of such averment by amending the Written Statement. He would submit that once the Written Statement is permitted to be amended, it is impermissible to ignore an averment in the amended pleadings on the ground that the same is subsequently added. Mr. Deshmukh would submit that the findings recorded by the Trial and the Appellate Courts suffer from non-application of mind and perversity warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. He would accordingly pray for setting aside the decrees passed by the Trial and the Appellate Courts.

8) The petition is opposed by Mr. Gavnekar, the learned counsel appearing for Respondent Nos.1 and 2-Original Plaintiffs. He would submit that the Trial and the Appellate Courts have rightly ignored the alleged written permission given by Anwar S. Kasam, who was the not sole owner in respect of the suit building and did not have any authority to issue any permission. He would submit that the said document at Exhibit-53 has been conveniently created by way of an afterthought since the original Written Statement did not contain any whisper about existence of any such permission. He would submit that the Plaintiffs examined two witnesses, who have personally witnessed execution of the unauthorised work in May 1990 when Plaintiffs were travelling. That the deposition of the two witnesses clearly falsifies the authenticity of the alleged written permission dated 2 January 1986. Mr. Gavnekar would submit that the extent of unauthorised work carried out by the Defendant is massive and has resulted in damage to the entire building. That the building draws support from load bearing walls. That Plaintiff No.1 is an Architect and had conducted an inspection of the building before purchase thereof and had noted down detailed measurements and status of the suit premises. That after 1990, there is massive alteration in the suit premises. That the plaint gives the entire account of massive unauthorised work carried out by the Defendant. He would take me through the details of the said works effected by the Defendant. Mr. Gavnekar

would submit that the Trial and the Appellate Courts have appreciated the evidence on record for arriving at the conclusion that the concerned work has been executed in May 1990 without the permission of the landlord and that the said work is not only unauthorised but has caused damage to the illegal structure. He would submit that said concurrent findings were recorded after appreciating the evidence on record and do not warrant interference by this Court. He would pray for dismissal of the petition.

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

10) Defendant's eviction is ordered by the Trial Court on the grounds of erecting permanent structure in the suit premises without the written permission of the landlord and commission of acts causing damage/injury to the suit premises. Thus, the suit is decreed under the provisions of section 108(o) of the Transfer of Property Act, 1882 read with Section 13(1)(a) of the Bombay Rent Act on account of acts of damage/injury to the structure. The suit is also decreed on the ground under Section 13(1)(b) of the Bombay Rent Act. The other ground of nuisance has been rejected by the Trial Court and the said finding is not questioned by the Plaintiffs.

11) Defendant-tenant raised twin defences to oppose the decree for eviction. Firstly, he contended that all the works were carried out with the written permission of the Plaintiffs' predecessor-in-title and secondly, none of the works carried out by him fit within the expression 'permanent structure' within the meaning of Section 13(1)(b) of the Bombay Rent Act. Therefore, the moot issues that arise for consideration in the present petition are :

(i) Whether the landlord had given written permission for carrying out the works in question ?

(ii) Whether the works in question effected by the Defendant is covered by the expression 'permanent construction' within the meaning of Section 13(1)(b) of the Act ?

(iii) Whether the Defendant has committed any act resulting in injury/destruction to the premises within the meaning of Section 108(o) of the Transfer of Property Act so as to attract the folly under Section 13(1)(a) of the Bombay Rent Act ?

12) So far as his first defence of execution of works with written consent of the erstwhile landlord is concerned, Defendant came out with a case, albeit by way of amended Written Statement, that Plaintiffs' predecessor-in-title, Anwar S. Kasam had issued written permission dated 2 January 1986 for carrying out the works in question. The said permission dated 2 January 1986 has been marked as Exhibit-53. The person giving the permission, Anwar S. Kasam has been examined as a witness. The said permission dated 2 January 1986 is shown to have been issued in pursuance of Defendant's application dated 15 December 1985 and the same permitted the Defendant to replace the tiles, plaster the walls, repair the bathroom and install rolling shutter.

13) Defendant examined Anwar S. Kasam as D.W.2 who was one of the co-owners in respect of the suit building prior to its purchase by the Plaintiffs. There is no dispute about the position that Anwar S. Kasam was not the sole owner in respect of the suit building and that there were other owners. The written permission relied upon by the Defendant at Exhibit-53 is shown to have been issued on 2 January 1986 by Mr. Anwar S. Kasam. Plaintiffs have purchased the suit property by conveyance dated 24 April 1986 and informed about the such purchase to the Defendant-tenant by letter of attornment dated 1 October 1987. Defendant initially did not plead about written permission dated 2 January 1986 in the Written Statement filed on 18 April 1992. He filed application for amendment of the Written Statement two years later, on 12 January 1994. Though this conduct of the Defendant in not raising a plea about existence of written permission dated 2 January 1986 in the Written Statement was unusual, the Defendant was permitted to amend the Written Statement by order dated 16 January 1995 subject to payment of costs of Rs.300/-. The written permission dated 2 January 1986 has been proved in evidence by examining Mr. Anwar S. Kasam as D.W.2.

14) While it is Plaintiffs' case that the works were executed during April 1990, it is the case of the Defendant that the work was carried out immediately after 2 January 1986 after receipt of the permission from Anwar S. Kasam. The Appellate Court has refused to believe that the works are carried out in accordance with the written permission dated 2 January 1986 issued by Anwar S. Kasam essentially on account of Defendant's failure to plead about such permission in the original Written Statement. The Appellate Court has also relied upon evidence of Plaintiff's brother, Madhukar Pradhan as well as Milind Chaudhari for inferring that the work was actually executed during April to July 1990. Another major factor considered by the Appellate Court for disbelieving the claim of the Defendant about execution of the work in January 1986 is the site inspection map prepared by Plaintiff No.1 during the course of his visit on 16 April 1986, which did not show existence of any bathroom. The Appellate Court has thus held that if the works were actually executed in January 1986, the same ought to have been reflected in the survey and measurement drawing prepared by Plaintiff No.1 during the course of his visit on 16 April 1986. The Appellate Court has laid emphasis on the fact that Plaintiff No.1 is an Architect by profession.

15) I have gone through the survey and measurement map of existing building prepared by Plaintiff No.1 on 16 April 1986 which also bears signature of Smt. Noorbanu Shamsuddin Dharsi alias Kasam. It is not some ordinary map prepared by a layman but a proper architect drawing with detailed measurements indicating the presence of all the structures in the building which Plaintiff No.1 was proposing to purchase. Additionally, there is a letter of the erstwhile owners (including Anwar S. Kasam) dated 22 April 1986 addressed to the Plaintiffs declaring and confirming the names of tenants, measurements and area of the premises which was in their use and occupation. The said letter gives

measurements of all the premises in occupation of each tenant/occupant. In respect of those tenants/occupants, who had bathroom within their premises, the same was specifically indicated in the said letter dated 22 April 1986. To illustrate, in respect of Room No.1 in occupation of Ramzan Husseinbhai, presence of bathroom admeasuring 4 ft x 5 ft = 20 sq.ft is clearly indicated. However, in respect of Shop No.3 in possession of the Defendant-tenant, only two structures are reflected viz. Shop admeasuring 13 ft 10 inch x 8 ft 10 inches and Room admeasuring 11 ft 11 inches x 8 ft 9 inches (total area of 226 sq.ft). Presence of bathroom is not reflected in the said letter. The said letter is marked in evidence at Exhibit-32. In my view, the Appellate Court has rightly relied upon the measurement drawing prepared by Plaintiff No.1 showing absence of Bathroom during the course of site visit made on 16 April 1986. Additionally, the letter dated 22 April 1986 once again does not show existence of any bathroom in the suit premises.

16) Plaintiff has examined two witnesses, Mr. Milind Chaudhari (P.W.2) and Madhukar Pradhan (P.W.3) who have deposed that the work in question was carried out by the Defendant in the year 1990 and that they personally witnessed the same. I have gone through the evidence of both the witnesses and the cross-examination conducted by the Defendant, which has not affected the deposition of work being carried out in the year 1990. On the other hand, the Defendant, in addition to his own testimony, has heavily relied upon deposition of Anwar S. Kasam. In addition to giving deposition about written permission issued by him on 2 January 1986, the said witness deposed that 'Thereafter defendant carried repairs as per permission in the same month. After repairs, I have gone to the suit premises and seen the same'. The deposition of Mr. Anwar S. Kasam is required to be considered in the light of the letter dated 22 April 1986 issued on behalf of the owners by Noorbanu Dharsi @ Kasam. If Noorbanu was acting on behalf of all the vendors/co-owners (as is clear from she alone signing the measurement map and issued the letter dated 22 April 1986 on behalf of owners), why the written permission dated 2 January 1986 was selectively issued by Anwar S. Kasam is difficult to digest. Also, the deposition of Anwar S. Kasam about execution of the entire work including construction of bathroom is belied by letter issued by Noorbanu on 22 April 1986, which does not reflect presence of bathroom inside the premises.

17) If these factors are considered conjointly with the act of the Defendant in not whispering about existence of written permission from Abdul Kasam in the Written Statement originally filed, the inescapable conclusion that emerges is that the Defendant has grown wiser and has procured the document in the form of permission dated 2 January 1986 from Abdul S. Kasam by way of afterthought. It is difficult to believe that Plaintiff No.1, who is an Architect by profession, who has indicated presence of very small structure in the building in the detailed survey map prepared by him, would omit existence of bathroom in the suit premises in the said map. The map is so detailed that it even includes presence of type of flooring (Shahabad Ladi) in the suit premises, teak wood

door and four shutters in the front portion, cupboards in the rear portion and finally Mori admeasuring 3 ft x 3 ft x 6 inches. The Plaintiff No. 1 was thus meticulous in preparing the survey map during the course of his visit on 16 April 1986.

18) Absence of bathroom in the measurement drawing prepared by Plaintiff No. 1 and countersigned by Noorbanu together with Noorbanu's letter dated 22 April 1986 on behalf of all owners, leave no manner of doubt that the bathroom has been constructed after April 1986.

19) I therefore do not find any patent error in the concurrent findings recorded by the Trial and the Appellate Court disbelieving the claim of the Defendant about obtaining written permission from Abdul Kasam for execution of the work on 2 January 1986 and about execution of the actual work in January 1986. The works are thus constructed by Defendant after purchase of the building by Plaintiffs and without obtaining Plaintiffs' written consent.

20) Coming to the next issue of nature of construction carried out by the Defendant, the decree for eviction can be passed under the provisions of Section 13(1)(b) of the Bombay Rent Act only if the construction is of 'permanent' nature. Plaintiff No. 1 being Architect by profession, he has pleaded every small detail of acts of removal/demolition and addition made in the suit premises in para 7 of the Plaint, which reads thus :

7. On the inspection of suit premises as aforesaid, the Plaintiffs have observed that the Defendant has without the prior written consent from Plaintiffs carried out demolition, destructions and has caused damages to Plaintiffs' property and further carried out alterations; additions, modifications and construction of permanent nature to suit premises as detailed below :

A) Back Room (Kitchen) :

i) The existing permanent mori in good condition of inside dimensions of 3'-6" x 3'-0" Shahabad Ladi flooring inside 3'-0" high 'Pan Poi' parapet side brick wall, 9" thick, smooth cement rendering on both sides and on top, 3'-0" high smooth cement rendering inside Mori on three sides, all these works were demolished, 6" thick concrete beding under Mori has been damaged and foundation plinth level is sunked (dropped) by 2".

ii) 4" dis. Cestiron drain outlet demolished and outside connecting drain gulley disturbed and damaged, 9" dia deep new hole dug out in main foundation.

iii) 2 Nos. window cills – original plaster hacked out.

iv) 9" high brick up stand in front side of Mori demolished.

v) In the corner above original Mori at 7'-6" height, outer 14" thick loadbearing wall was chased in 4" deep and 4'-0" long, and 12" wide neroo finish plaster hacked out.

- vi) 2 Nos. 6" dia x 6" deep holes made on either side of 14" thick loadbearing outer structural wall, underneath window arch.
- vii) 10" x 10" x 4" deep hole dug out in 14" thick outer load bearing structural wall pier, between rear window and door for mounting recessed (flush) electrical
- viii) 6" high original neroo plaster has been hacked out at skirting level all around back-room.
- ix) At 18" above floor level 3" wide x 3" deep and 14'-0" long continuous chase in 14" thick brick outer wall to recess water pipe to front room.
- x) 3" dia. Hole through and through in 14" brick wall between shop and back-room at 18" height from floor level.
- xi) Bottom of door between adjoining tenement is damaged and door could not be opened.
- xii) 12" x 15" x 1½" thick Shahabad Ladi in excellent good condition, of entire flooring removed and Ladis were carted away and disposed off.
- xiii) At number of places – original plaster work damaged and hacked out.
- xiv) At number of places in original brick wall recess were dug out, drilled out number of deep holes and through holes.

FRONT ROOM (SHOP) :

- i) 3 Nos. existing brick entrance steps in good condition measuring 34" long x 26" (projected from building face) x 30" high, each Tappa 8"R x 8"T with smooth cement rendering were demolished.
- ii) Existing timber shop door 5'-6" wide x 7'-8" high in good condition with 4 Nos. T.W. folding shutters, ripped off along with M.S. hinges, this has weakened vertical T.W. door frames and left them permanently damaged. 4 Nos. T.W. shutters are removed from premises.
- iii) 4" x 3" T.W. bottom (floor) trasnome of the main shop door (Umburtha) has been sawn off either end and removed, hence main door frame strength has been weakened.
- iv) 12" x 15" x 1½" thick Shahabad Ladi in good condition of flooring has been removed and ladis were carted away and disposed off.
- v) 12" high original Shahabad Ladi skirting on all four sides has been removed and plaster hacked out/ removed.
- vi) 3" x 3" deep continuous chase in the outer main 14" thick wall at 18" height from shop floor level, to recess water pipe.
- vii) 3'-0" high x 4'-8" wide corner of front window jamb of 14" thick brick wall at 3'-0" above shop floor level has been champhered/demolished, at a very critical

angle corner of main structural outer wall (load bearing) of the building, this has reduced the strength of main load bearing outer wall supporting brick pier.

viii) 9" diameter x 15" deep hole dug out in floor and 6" dia. Through hole is made in outer foundational wall, thereby damaging/breaking 6" wide concrete coping, this has weakened the foundation at the corner of the building.

The Defendant has further carried out alterations modifications and additions and permanent constructions in the suit premises without obtaining prior written permission from the Plaintiffs:

BACK-ROOM (KITCHEN) :

i) New permanent bathroom of 4'-4" x 3'-6" overall dimensions, 6" brick pillar in the corner of the bathroom. Bathroom is finished inside in glazed tiles set on sand/cement mortar, tiling is upto full height i.e. 7'-6".

ii) New 2'-6" wide x 7'-5" high with 1'-2" high ventilator aluminium framed bathroom door fixed.

iii) New 12" x 15" Kotha stone tiles to bath-room floor on 1 ½" sand/cement bed. New 6" dia cast iron drain outlet with strainer connected to outside gully.

iv) New hot water and cold water plumbing assemblies, taps, electrical hot water geyser bolted to wall, plumbing concealed at some places.

v) Whole bathroom flooring is recessed by 2" down from finish floor level of back-room. 2" wide Cadappa door-patti set in floor.

vi) 2" thick cadappa slabs, 2 pieces are permanently set on top of the bathroom to form a loft at 7'-5" height. These 2" thick cadappa slabs are extremely heavy and weigh approx. 180 kgs. in total. These are marginally and inadequately supported on three sides only.

vii) 6" brick wall on one side, 1 No. RSJ 3" x 1 ½" I section spanning window opening of 2'-10". 3" x 1½" I section RSJ is embeded on either sides of window walls having 4" deep bearing on second side and on third side edge of cadappa slab is embeded into outer 14" brick structural wall of the building by 3" deep chase, 4th side of the loft is unsupported.

viii) 200 Gallons capacity syntex water storage tank on loft which will further increase load on cadappa slab loft. The whole construction of forming and supporting loft is very dangerous and will result into accident and loss to property and human life.

ix) New 24" long and 18" wide polished Kotha stone tiles flooring to whole room laid on 2" thick sand/cement screen bed.

x) New 6" high polished kotha stone tiles skirting on sand/cement rendering on all sides.

- xi) New 2'-0" wide x 3'-1" long cooking platform in cadappa stone supported on 6" thick brick walls, 3/4" thick 1 no. 2'-0" long x 1'-1" cudappa shelf under the platform built into side supporting walls under.
- xii) 3'-0" x 8'-" wide x 3/4" thick cudappa shelf, above cooking platform at 5'-3" above floor level, cantilevered from and built into brick courses of bathroom wall.
- xiii) 3'-6" high glazed tiles, dadoo outside bathroom and under cooking platform.
- xiv) New neroo finish plaster and sand/cement mortar base coat to new 6" brick wall of bathroom.
- xv) 2 Nos. 12" wide x 2'-10" long Cudappa window cills, on sand/cement screed.

FRONT ROOM (SHOP) :

- i) New 24" x 18" polished kotha stone tiles flooring to whole room set on 2" sand/cement screed base.
- ii) New 6" high polished kotha stone tiles skirting on sand/cement rendering.
- iii) New 5'-6" long 3 Nos. entrance steps, polished kotha stone tiles finished, each tappa (step) 10-1/2" T x 7" riser.
- iv) New 5'-6" wide x 7'-8" high, pull down M.S. Steel rolling shutter, 2 Nos. side steel channel guides, fixed to 14" brick wall on either sides of main door by 16 Nos. 4" long steel concrete nails.
- v) 2 Nos. 12" wide 1" thick window cills on sand/cement screed.
- vi) 12'-0" long 2'-0" high x 2'-9" projecting M.S. angle framing to receive signboard fascia, steel angles frames bolted to main structural wall and underneath first floor cantilevered balcony and RCC brackets.
- vii) New 6" dia floor drain outlet, with perforated strainer.
- viii) New 3" dia. castiron x 45o angle bent waste drain connection, with cleaning eye, outside on plinth, fixed to new 2-1/2" M.S. upstand drain pipe fitted into outside gully to receive floor drain pipe.
- ix) New enamelled finish steel shampoo basin, fitting fixed on 1 1/2" x 1 1/2" M.S. angle brackets, fixed and bolted to main load bearing brick wall on T.W. lugs.
- x) 3/4" dia. G.I. water supply pipe encased into load bearing brick wall.

The Plaintiffs state that the Defendant has carried out the demolitions, alterations, modifications and additions and construction of permanent nature in the suit premises without the prior written consent from the

Plaintiffs and has made himself liable for ejectment from suit premises.

21) From the long list of acts described in detail by the Plaintiffs, the main offending acts are as under :

- (i) Construction of bathroom
- (ii) Replacement of tiles throughout the premises including putting up of new tiles in bathroom
- (iii) Construction of loft on the top of the bathroom by putting up 2 inch thick cadappa
- (iv) Installation of water storage tank on the loft above bathroom
- (v) Cooking platform in cadappa
- (vi) Demolition of old steps at shop's entry and construction of new steps of different measurements
- (vii) Replacement of wooden gate by rolling shutters.
- (viii) Addition of projected sign board by use of steel frame.

22) Construction of kitchen platform is sought to be explained by Mr. Deshmukh by relying upon judgment of this Court in Pitambardas Kalyanji Bakotiya (supra). It is not necessary to delve deeper into the issue of kitchen platform being covered by the expression 'permanent structure' in view of the legislature finally taking note of numerous Court decisions and excluding construction of kitchen platform under Explanation to Section 13(1)(b). Section 13(1)(b) of the Bombay Rent Act reads as under:

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure,

Explanation.- For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the local authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or

23) The Explanation was added by Amendment Act of 1987. The suit was instituted in the year 1991 by which time the amended provision of Section 13(1) (b) had come into effect and that therefore eviction of Defendant could not be sought for act of construction of kitchen platform. Same applies to replacement of tiles, which is permissible under Explanation to Section 13(1)(b).

24) The next contentious issue between the parties is about construction of bathroom in the suit premises by the Defendant. The survey measurements conducted by the Plaintiff on 16 April 1986 showed existence of mori admeasuring 3 ft x 3 ft 6 inches. In the Plaint, Plaintiff averred that new permanent bathroom admeasuring 4 ft 4 inches x 3 ft 6 inches with 6 inch brick wall, 7 ft 6 inches in height was constructed with aluminum frame bathroom door, drain outlet connected to outside gully, plumbing assemblies, lowering of bathroom flooring by 2 inches, 2 inches thick Cadappa on the top of the

bathroom for creation of loft at height of 7 ft 5 inches and installation of water storage tank on the loft, etc.

25) Mr. Deshmukh submitted that the work of covering of the mori by construction of a bathroom is for more beneficial use and for privacy and that therefore the same does not amount to erecting permanent structure within the meaning of Section 13(1)(b) of the Bombay Rent Act. He has relied upon judgment of this Court in Alisaheb Abdul Latif Mulla (supra) in which this Court held in para-26 as under :

26. The case which to my mind directly applies to the facts of the present case is, that decided in Suku Ishram v. Ranchhoddas [1972 Mh. LJ 477 : AIR 1972 Bom 273.]. In that case, a lessee of a temporary shed had erected a brick wall with a foundation in brick and mortar on the side of the road where the shed was. Besides, he had also erected a partition wall in between the shed so that, one part of the shed could be used for the purposes of storing articles and the other was for the purposes of the shop. It had also a foundation 1½ ft. × 2½ ft. Nevertheless, it was held that neither the partition wall, nor the wall erected on the side of the street to the shed could be described as permanent structure. Merely because therefore, a wall is erected and that wall is built either in cement, sand or brick and mortar, it does not follow that the work must be styled as "permanent construction". If the work has been effected so as to enable the person using the premises for a better enjoyment and beneficial use of the same premises, if there is no change in the form of the structure, if there is no different use by the erection of the structure than the one which is already being carried out in the premises, then notwithstanding that the work was carried out in durable materials and is of such a type or nature as is done in cases of permanent structures, it would not follow that what was done was an erection of a permanent structure. If that test was applied, then the mere erection of a wall which is more of a screen to provide privacy to a person who had otherwise no privacy while bathing, in the absence of any foundation, in the absence of any evidence to show that the wall was so constructed are joined after cutting into the existing wall by removing the bricks of the existing wall for a better joint of the two walls would not make it a permanent structure. The addition of a wall in the nature of a screen could be easily removed by dismantling. It is difficult to see how any damage in the process except of a superficial nature will be caused to the existing premises. The quantum of damage which would be inflicted while removing the structure would certainly be different and can be a test to decide whether the structure is of a permanent nature or otherwise. The same can be said of the extension of the mori. I have already pointed out that there is no clear and satisfactory evidence as to the extent of the existing structure of the mori, whether it was 3½ ft. × 4 ft. or 6 ft. × 4 ft. Even if the work which was done amounts to extension of a mori, as pointed out, the three functions for which the mori which was formerly used are now divided and three separate portions are used for the three functions. That undoubtedly ensures better enjoyment and more satisfactory and efficient use of the premises without

changing the purposes for which it was let and without changing the purposes for which the premises or facilities was used. As I pointed out, the existing facility was merely extended, the purposes which could have been achieved by a flimsy erection of a partition or screen. This has been done in the present case by erecting a wall and extending the premises which limited their functional use.

(emphasis added)

26) It appears that in Alisaheb Abdul Latif Mulla, construction of wall around the mori was such that it was easily removable without causing damage to the structure. Also, there was factual dispute about extension of area of mori. In the present case, the mori is undoubtedly extended while converting the same into a bathroom. In the present case, if the Defendant was to restrict his activities to mere covering of the existing mori, by walls for the sake of privacy, the ratio of the judgment in the case of Alisaheb Abdul Latif Mulla would have applied to the present case as well. However, what is sought by the Defendant is not just covering of the mori for the sake of privacy. He has extended the size of the mori while constructing a new bathroom. He has unauthorisedly created a loft on the top portion of the bathroom by installing a new water storage tank. Furthermore, construction of wall for creation of bathroom does not seem to be easily removable. Description of construction carried out for bathroom as pleaded by Plaintiff is as under:

6" brick wall on one side, 1 No. RSJ 3" x 1 1/2" I section spanning window opening of 2'-10". 3" x 1 1/2" I section RSJ is embeded on either sides of window walls having 4" deep bearing on second side and on third side edge of cadappa slab is embeded into outer 14" brick structural wall of the building by 3" deep chase, 4th side of the loft is unsupported.

Whole bathroom flooring is recessed by 2" down from finish floor level of back-room. 2" wide Cadappa door-patti set in floor.

New hot water and cold-water plumbing assemblies, taps, electrical hot water gyzer bolted to wall, plumbing concealed at some places.

2" thick cadappa slabs, bathroom to form a loft are extremely heavy and 2 pieces are permanently set on top of the at 7'-5" height. These 2" thick cadappa slabs weigh approx. 180 kgs. in total.

27) It is difficult to believe that the above work carried out is only for the purpose of providing a screen for privacy in the mori. Defendant has lowered the plinth in bathroom area by 2 inches, he had embedded several items into the existing walls by creating chases, has concealed the plumbing pipes in the walls, has put additional wight of 180 kgs of two cadappa slabs, etc. As if this was not enough, he has installed 200 gallon capacity of water tank on the loft so created thereby further increasing the load on already weighty cadappa slabs. In my view therefore, the fact situation in the present case being entirely different, ratio of the judgment in Alisaheb Abdul Latif Mulla would not apply here.

28) In *M.B.K. Enterprises & Ors. Versus. Saidpur Jute Co. Ltd. & Ors.* 2024 SCC OnLine Bom 3529 and in *Hemant Bharat Kachare Versus. Vasu Anna Shetty & Ors.* 2024 SCC OnLine Bom 3461, I have taken a view that construction of an additional bathroom in the tenanted premises amounts to permanent construction within the meaning of Section 13(1)(b) of the Bombay Rent Act. Of course, both cases involved commercial premises and not conversion of mori into bathroom. Even in present case, the premises are commercial + residential and not purely residential. The premises were let out mainly for operating hair cutting saloon.

29) The next major allegation against the Defendant is about ripping of the existing wooden door and replacing the same by wooden shutter. I have already taken a view in *Anil Joginder Sachdev and another Versus. Balasaheb Hiralal Zad and another* Civil Revision Application No. 516 of 2019 decided on 13 September 2024 that act of a tenant in installation of a rolling shutter for providing better security would not ipso-facto amount to putting up of permanent construction even though some damage is likely to be caused while affixing the rolling shutter.

30) Another allegation against Defendant is to replace the steps in front of the shop. The dimensions of the earlier steps are reflected in the measurement and survey drawing prepared by Plaintiff, which were 34 inches long and which are demolished. The reconstructed steps now measure 5 ft 6 inches (66 inches in total). Thus the length of entry steps are expanded by almost twice the size as compared to old ones.

31) Defendant has also carried out several other additions and alterations in the suit premises like construction of a projected signboard by use of steel frames, adding of a drainpipe outside the plinth of the building, construction of steel shampoo basin on the load bearing walls with G.I. water supply pipes etc. Additionally, he also removed several of the constructions and fixtures of the premises as detailed by the Plaintiff in para-7 of the plaint. The case therefore does not involve stray construction activity of a kitchen platform or conversion of mori into bathroom. There are massive renovations carried out in respect of the entire premises by construction of a new bathroom, replacement of tiles, installation of a rolling shutter, kitchen platforms, loft, storage tank, basin etc. None of these activities are carried out with the written permission of the Plaintiffs and the same appear to have been done by taking disadvantage of Plaintiffs' absence on account of their travel outside the city.

32) Mr. Deshmukh has relied upon judgment of this Court in *Somnath Krishnaji Gangal (supra)* in which this Court has summarised the conclusions relating to the nature of a construction in para-21 as under :

21. in view of the decisions of the Hon'ble Supreme Court and of this Court, my conclusions are as under:

(i) In deciding the question as to what is a "permanent structure", it is necessary to consider the mode and degree of annexation as also the intention of the party

putting up the structure. The creation of such a work or addition thereof in order to amount to a permanent structure must cause and bring about a substantial improvement and change in the nature and form of accommodation.

(ii) If what has been done is by way of minor repairs for the better enjoyment and use of the premises, it cannot be regarded as a permanent structure. Similarly, if the object and purpose of annexation was only to better the mode of enjoyment of the demised premises as in the case of construction of the kitchen platform, it does not amount to a permanent structure within the meaning of section 13(1)(b) of the said Rent Act.

(iii) The essential element which needs consideration is as to whether the construction is substantial in nature and whether it alters the form, front and structure of the accommodation.

(iv) If what the tenant does is large scale renovation like replacement of the entire roof, covering it with marble tiles, without obtaining permission of the landlord, it may amount to permanent structure within the meaning of section 13(1)(b) of the Rent Act.

(v) Similarly, if the tenant constructs a bathroom in the gallery which puts additional burden in the gallery which is harmful to the structure of the building, it would amount to a permanent structure.

33) A tenant is supposed to occupy the premises as they are let out to him by the landlord. On account of protection from rent escalation and eviction, no tenant vacates the premises on his own accord and continues to retain its possession notwithstanding the fact that the same becomes inconvenient to reside or carry on business. On account of long retention of the premises, its condition deteriorates. The premises need upkeep. Also, with passage of time, more convenient modes of living are adopted like cooking on a raised platform rather than a sitting kitchen or bathing in a private enclosed room than in open mori or having a smoother tiled flooring than old rough stone or koba/cemented flooring. Sometimes tenant needs better security in a shop by installing rolling shutter. Recognizing these changing trends of living comforts, various judicial pronouncements excluded various activities such as replacement of titles, construction of kitchen platform, screening of open mori by walls for privacy, replacement of doors with rolling shutters, etc. Some of these living comforts received legislative recognition by amendment of 1987 to Section 13(1)(b). The issue however is whether a tenant, under the garb of making changes for better enjoyment of premises, bring about a wholesome change or overhaul it completely without landlord's consent ? Addition of couple of living comforts must be distinguished from carrying out wholesale renovation of the premises. If the tenant finds the premises wholly unsuitable for his residence or business and the landlord is not agreeable for renovation, it would be appropriate for the tenant to search for alternate premises rather than breaching the conditions of tenancy by carrying out wholesale renovations, additions and alterations in the premises. A

tenant cannot enjoy protection for rent escalation and eviction, and at the same time, treat the premises as if they are his own by unilaterally altering its status without landlord's consent.

34) Though it is sought to be contended that minor repairs for better enjoyment and use of the premises cannot be regarded as erecting permanent structure, in the present case, it is difficult to believe that what is carried out by the Defendant is only minor repairs. He has virtually renovated the entire premises without the knowledge and consent of the landlord and has adopted a false plea that he had secured written permission of the previous landlord on 2 January 1986. In fact, the very defence of the Defendant that he had secured permission from the erstwhile landlord for carrying out the works, contains an implied admission that the works that were carried out, in law, required written permission of the landlord. Defendant has thus adopted contradictory stands to justify his acts, which cannot be countenanced. Defendant cannot be permitted to approbate and reprobate by first contending that he did not carry out any of the alleged constructions and thereafter sheepishly producing a document in the form of written permission of previous landlord dated 2 January 1986. The entire conduct of the Defendant throughout the proceedings does not inspire confidence in respect of his actions. In my view, therefore the Trial and the Appellate Courts have rightly rejected his contradictory defences by decreeing the suit. I therefore do not find any valid reason to interfere in the concurrent findings recorded by the Trial and the Appellate Courts.

35) Writ Petition is accordingly dismissed. Considering the facts and circumstances of the case, the Defendant is granted time upto 28 February 2025 to vacate the suit premises subject to the condition of not creating any third party rights therein.