2025:BHC-AS:37013

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 257 OF 2022
WITH
INTERIM APPLICATION NO. 30503 OF 2022

Aarti w/o Jitesh Modi ...Applicant

Versus

1. Pushpaben Popatlal Modi
2. Jitesh Popatlal Modi ...Respondents

Mr. R. R. Nair, for the Applicant in CRA/257/2022 and IA/30503/2022.

Mr. Anil D'souza, i/b Kartik Vig, for Respondent No.1.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 24th JUNE, 2025
PRONOUNCED ON: 3rd SEPTEMBER, 2025

JUDGMENT:-

1. This revision application is directed against the judgement and decree dated 4th May, 2022 passed by the Appellate Bench of the Court of Small Causes at Bombay in P. Appeal No.398 of 2019, whereby the appeal preferred by respondent No.1 against a judgment and decree passed in LE Suit No.36/42 of 2013 came to be allowed by setting aside the said judgment and decree, and directing the applicant – defendant No.2 to hand over clear and vacant possession of

Room No.40, 3rd Floor, Rishikesh Bhavan, Parel, Mumbai, ("the suit premises") to respondent No.1.

2. The dispute between the parties has its genesis in matrimonial and familial discord. For the sake of convenience and clarity, the parties are hereinafter referred to in the capacity in which they were arrayed before the trial Court.

3. Pushpaben - the plaintiff is the mother of Jitesh (D1). Aarti (D2) – the applicant is the estranged wife of D1. Popatlal Modi the husband of plaintiff and father of D1 was the tenant in respect of the suit premises. Popatlal passed away on 25th November, 1986, leaving behind plaintiff, defendant No.1, another son Jayesh and a daughter Bhavna.

4. The plaintiff asserted, in the year 2005, Jitesh (D1), Jayesh and Bhavna relinquished their tenancy rights in the suit premises in favor of the plaintiff. Thereupon, the plaintiff became the sole tenant in respect of the suit premises and, thereafter, the landlord had issued the rent receipts in favour of the plaintiff alone.

5. Since the marital life of the defendant Nos.1 and 2 was afflicted with discord and there were frequent quarrels, and the premises which was in the occupation of the family, at Dadar was insufficient, defendant Nos.1 and 2 were allowed to occupy

the suit premises as gratuitous licensee. In the year 2013, the defendants, however, raked up quarrels with the plaintiff and exerted pressure on the plaintiff to transfer the tenancy qua the suit premises in favour of defendant No.2 purportedly with a view to settle the claim of defendant No.2 in the matrimonial proceedings. Thus, the plaintiff called upon the defendants to vacate the suit premises and hand over the possession thereof to the plaintiff. As the defendants did not accede to the request of the plaintiff, she was constrained to institute the suit to recover possession of the suit premises and the consequential reliefs.

6. The defendant No.1 did not contest the suit and, thus, it proceeded without written statement against defendant No.1.

7. The defendant No.2 stoutly resisted the suit. After referring to the historical facts about the tenancy qua the suit premises, defendant No.2 contended that she had been in use and occupation of the suit premises since 1999. As the premises of the family at Dadar was found insufficient to accommodate all the family members of late Popatlal, she and Jitesh (D1); her husband, shifted to the suit premises and were residing together therein. It was denied that the tenancy was exclusively transferred to the plaintiff under the affidavit affirmed by the

sons and daughters of late Popatlal, dated 7th July, 2005. Refuting that defendant No.2 is a gratuitous licensee, it was contended that defendant No.2 has been in the occupation of the suit premises in her own right. It was alleged that in the wake of the matrimonial disputes, the suit has been instituted by the plaintiff in collusion with Jitesh (D1) with an oblique motive to evict defendant No.2 from the suit premises.

8. The learned Civil Judge recorded the evidence of the plaintiff (PW1) and her another son Jayesh (PW2). In the rebuttal, defendant No.2 (DW1) entered into the witness box.

9. After appraisal of the evidence and the documents tendered for his perusal, the learned Judge, Court of Small Causes, was persuaded to dismiss the suit holding, *inter alia,* that the plaintiff failed to establish that defendant No.2 was a gratuitous licensee and that the alleged surrender of tenancy by Jitesh (D1), the husband of D2, was with an intent to deprive D2 of the right of residence in the suit premises.

10. Being aggrieved, the plaintiff preferred an appeal. The Appellate Bench of the Court of Small Causes, after reappraisal of the evidence, overturned the findings of the trial court observing, *inter alia,* that defendant No.2 has no right to occupy the suit premises against the wishes of the plaintiff, as the

defendant No.2 could claim her rights only through her husband, Jitesh (D1); who had already surrendered the rights in the suit premises in favour of the plaintiff.

11. Being aggrieved, defendant No.2 has invoked the rivisional jurisdiction.

12. I have heard Mr. R. R. Nair, the learned Counsel for the applicant, and Mr. D'souza, the learned Counsel for respondent No.1 – plaintiff, at length. The learned Counsel took the Court through the pleadings and evidence on record.

13. Mr. Nair, the learned Counsel for the applicant, strenuously submitted that the Appellant Bench of Court of Small Causes was in grave error in passing the decree of eviction. The Appellate Bench lost sight of the fact that defendant No.2 has been in the occupation of the suit premises as her matrimonial home. The applicant had been residing in the suit premises alongwith her husband (D1) much prior to the alleged surrender of tenancy by Jitesh (D1). Thus, in view of the provisions contained in the Protection of Women from Domestic Violence Act, 2005 ("the DV Act, 2005") the applicant was entitled to a right of residence in the suit premises.

14. Mr. Nair laid particular emphasis on the fact that Jitesh (D1) did not bother to contest the suit. In the wake of the

marital discord leading to proceedings before the Family Court, to wreak vengeance the plaintiff instituted the suit by falsely claiming that defendant No.2 was a gratuitous licensee. In the face of the undisputed position that defendant No.2 has been in the occupation of the premises since the year 1999, the Appellate Bench could not have inferred that defendant No.2 had no right, independent of that of Jitesh (D1), to continue to occupy the suit premises.

15. In order to lend support to the aforesaid submissions, Mr. Nair placed a strong reliance on a judgment of this Court in the case of ***Roma Rajesh Tiwari vs. Rajesh Dinanath Tiwari***[1] and a judgment of the Supreme Cout in the case of ***Sathishchandra Ahuja vs. Neha Ahuja***[2]***.***

16. Per contra, Mr. D'souza, the learned Counsel for respondent No.1, stoutly submitted that the Appellate Bench was fully justified in reversing the judgment and decree passed by the trial court. Indisputably, the plaintiff was one of the legal heirs of late Popatlal and the rest of the legal heirs of Popatlal had surrendered the tenancy rights in favour of the plaintiff on 7th July, 2005 itself. Defendant No.2, thus, cannot enforce her

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1 2017 SCC OnLine Bom 8906.

2 (2021) 1 SCC 414.

rights qua the property in which the plaintiff had exclusive tenancy rights.

17. Mr. D'Souza submitted that, the reliance on the judgments in the cases of ***Roma Rajesh Tiwari*** (supra) and ***Sathishchandra Ahuja*** (supra) is of no assistance to the applicant as those judgments were rendered in the proceedings arising out of the DV Act. Defendant No.2 can very well enforce her remedies against Jitesh (D1); her husband. However, upon termination of the gratuitous licence, defendant No.2 has no semblance of right to occupy the suit premises. Thus no interference is warranted in the impugned order, in exercise of limited revisional jurisdiction, submitted Mr. D'souza.

18. To begin with, it is imperative to note that the instant proceeding involves the intersection of the familial and proprietary disputes in relation to a tenanted premises. The trial Court approached the controversy from a broader perspective and weighed in the factors influencing the familial disputes between the parties, and the motive behind the litigation. It was thus held that defendant No.2 could not be termed a mere licensee of the plaintiff, as she had right to reside in the suit premises.

19. The Appellate Bench, on the other hand, took a constricted view of the matter and proceeded on the premise that once it was conceded that the plaintiff was the sole person who succeeded to the tenancy upon the demise of Popatlal, with the consent of all the other heirs of late Popatlal, the occupation of defendant No.2 was purely permissive in nature and that too through Jitesh (D1). And since Jitesh (D1) has surrendered his tenancy rights, defendant No.2 was not entitled to hold on to the suit premises.

20. The legality and correctness of the aforesaid approach of the Appellate Bench warrants evaluation. To have a clear perspective, the factual backdrop, which is, by and large, not in dispute, deserves to be noted. Incontrovertibly, late Popatlal was the tenant of the suit premises. Popatlal passed the away in the year 1986, leaving behind plaintiff, Jitesh (D1), Jayesh and Bhavna. The marriage of defendant No.2 was solemnized with Jitesh (D1) in the year 1998. It seems their marital life was afflicted with discord since inception. The family was initially residing at Dadar. Defendant Nos.1 and 2 shifted to the suit premises around the year 1999. A daughter was born out of the wedlock at the suit premises, in the year 2001.

21. As the marital discord escalated, defendant No.2 alleges, defendant No.1 deserted her. Though the precise date on which defendant Nos.1 and 2 started to reside separately does not emerge from the record, yet, it is indisputable that in the year 2006 defendant No.1 instituted a petition for dissolution of marriage before the Family Court, being Petition No. 1752 of 2006. It is pertinent to note on 7th July, 2005, defendant No.1 and his other siblings affirmed an affidavit surrendering their tenancy rights in the suit premises in favour of the plaintiff, their mother.

22. In the backdrop of the aforesaid facts, whether the inference drawn by the Appellate Bench that deferment No.2 is the gratuitous licensee of the plaintiff is sustainable? The Appellate Bench was of the view that, indisputably, defendant No.2 had not been residing with the original tenant when he passed away in 1986. Defendant No.2 was claiming tenancy in her capacity as the wife of defendant No.1 and at the mercy of the Plaintiff. Whether defendant No.2 was having any rights in the suit premises was beyond the remit of the jurisdiction of the Court of Small Causes.

23. The aforesaid view of the Appellate Bench deserves to be appreciated in the light of the fact that it is the positive case of

the plaintiff that in the year 1999, on account of the disputes among her children, and the paucity of space at Dadar, defendant Nos.1 and 2 were allowed to reside in the suit premises. Defendant No.2 thus occupied the suit premises alongwith Jitesh (D1), while the latter had yet not surrendered his tenancy rights in the suit premises in favour of the plaintiff. The Appellate Bench was thus factually not correct in recording that defendant No.2 was allowed to occupy the suit premises at the mercy of the plaintiff. Defendant No.2 started to reside in the suit premises while all the legal heirs of late Popatlal were still the joint tenants qua the suit premises. What consequences emanate from such occupation of the suit premises by defendant No.2 in the said capacity?

24. At this juncture, recourse to the protective regime enshrined by the Protection Of Women from Domestic Violence Act, 2005 may be apposite. DV Act, 2005 was enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution, to provide for a remedy under the civil law which was intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. One of the stated objects sought to be

achieved by the enactment of the DV Act, 2005, was to provide rights of women to secure housing. It reads as under:

> " It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate."

25. Section 17 of the DV Act, 2005 gives the women right to reside in a shared household. It reads as under:

> "**17. Right to reside in a shared household.—**
>
> (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same
>
> (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."

26. It would be contextually relevant to note the definitions of the "domestic relationship" and "shared household" which are the key expressions in sub-section (1) of Section 17. They read as under:

> "**2(f) "domestic relationship"** means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
>
> **2(s) "shared household"** means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, ir-

> respective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

27. A conjoint reading of the aforesaid provisions would indicate that the Parliament professed to secure the right to residence to a woman in a domestic relationship, by giving an overriding effect to the said right by incorporating a non-obstante clause. Such right is available qua a shared household. The expression, "whether or not she has any right, title or interest or beneficial interest in the same", which follows the term "shared household" is of critical salience. The right to reside in the shared household is, in fact, *de hors* such right, title or interest. The right to reside stems from the domestic relationship, which has its nexus with the shared household. If these two conditions are satisfied, then notwithstanding the absence of any right, title or interest in the shared household, the aggrieved woman is entitled to enforce her right to reside in the shared household, notwithstanding anything contained in any other law for the time in force.

28. In the case of ***Roma Tiwari*** (supra) a learned Single Judge construed the nature of the residence order that can be passed under Section 19 of the DV Act, which reads as under:

> "**19. Residence orders.—**
> (1) While disposing of an application under sub-section (1) of section12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

> (a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
>
> (b) directing the respondent to remove himself from the shared household;
>
> (c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
>
> (d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
>
> (e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
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> (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.
>
> ... ..."

29. After adverting to the aforesaid provisions, the learned Single Judge observed that the words, "whether or not the respondent has a legal or equitable interest in the shared household" are of utmost significance, when the right of the aggrieved person i.e. wife is to be decided so far as her residence in the shared household is concerned. The question of title or proprietary right in the property is not at all of relevance when the provisions of DV Act, especially Section 19 thereof, are to be considered. As a matter of fact, it needs to be emphasized as the wife's right to reside in the matrimonial home was being

defeated on this very ground that the house does not belong to the husband, or does not stand in his name, the DV Act 2005 was brought on the statute book with the specific and clear language. The moment it is proved that it was a shared household, as both of them had in their matrimonial relationship i.e. domestic relationship, resided together thereat, and, in that case, up to the time the dispute arose, it followed that the petitioner wife got right to reside therein.

30. It is true, the aforesaid observations were made in the context of a dispute which arose out of the order passed by the Family Court in a matrimonial dispute. However, in view of the special feature of the DV Act, 2005, the nature of the proceeding in which the protective orders can be sought and passed is not of material significance. The Parliament has designedly and advisedly provided for the grant of any of the reliefs available under Sections 18, 19, 20, 21 and 22 of the DV Act 2005 in any legal proceeding before a Civil Court, Family Court or Criminal Court.

31. Section 26 of the DV Act, 2005 reads as under:

> **"26. Relief in other suits and legal proceedings.—**
>
> (1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

> (2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.
>
> (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."

32. It is, therefore, no answer to a claim for protection referrable to the provisions under the DV Act, 2005 that the proceeding in question is not before the Magistrate empowered under the said Act.

33. At this stage, the three-Judge Bench judgment of the Supreme Court in the case of ***Satishchandra Ahuja*** (supra) deserves to be consulted. The facts in the said case have an element of resemblance to the facts of the case at hand.

34. In the said case, the appellant – plaintiff was the father-in-law of the respondent - woman. The appellant had acquired the subject property under a conveyance in the year 1983. The marriage of the respondent was solemnized with the son of the appellant in the year 1995. Post marriage, the respondent started to reside in the subject premises alongwith her husband. In the wake of marital discord, the appellant's son moved out of the subject premises. The respondent continued to occupy the same. Appellant's son filed a petition for dissolution of marriage. The respondent had filed an application under

Section 12 of the DV Act, 2005. In the year 2017, the appellant instituted a suit against the respondent, as the sole defendant, seeking a decree for mandatory injunction against the respondent to remove herself, and her belongings from the subject premises. In view of a purported admission in the written statement, the trial Court passed a decree on admission under Order XII Rule 6 of the Code. On appeal, the High Court set aside the decree and remitted the matter back to the trial court for afresh decision after considering the statutory rights of the respondent.

35. A submission was canvassed before the Supreme Court that in view of the decision of the Supreme Court in the case of ***S. R. Batra and anr. vs. Taruna Batra***[3]**,** the respondent therein had no right of residence in the premises belonging to the appellant-her father-in-law. The Supreme Court framed *inter alia* the following questions, which arose for the consideration:

> "30.1 (1) Whether definition of shared household under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 has to be read to mean that shared household can only be that household which is household of joint family or in which husband of the aggrieved person has a share?
>
> 30.2 (2) Whether judgment of this Court in S.R. Batra and Anr Vs. Taruna Batra (2007) 3 SCC 169 has not correctly interpreted the provision of Section 2(s) of Protection of Women from Domestic Violence Act, 2005 and does not lay down a correct law?
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> 30.3 (3) ... ...

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3 AIR 2007 Supreme Court 1118.

> 30.4 (4) Whether, when the defendant in her written statement pleaded that suit property is her shared household and she has right to residence therein, the Trial Court could have decreed the suit of the plaintiff without deciding such claim of defendant which was permissible to be decided as per Section 26 of the Act, 2005?

36. After an elaborate analysis tracing the legislative history and object behind the enactment of DV Act 2005 the Supreme Court ruled that the decision in the case of ***S.R, Batra.*** (supra) which held that wife is only entitled to claim the right of residence in the shared household and the shared household could only mean the house belonging to or taken on rent by the husband or the house which belongs to the joint family of which the husband is a member, does not lay down the correct law. The observations in paragraphs 69 and 70 are material and hence extracted below:

> "69. In para 29 of the judgment, this Court in S.R. Batra V Taruna Batra (Supra) held that wife is only entitled to claim a right to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have noticed the definition of "respondent" under the Act. The respondent in a proceeding under Domestic Violence Act can be any relative of the husband. In event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household.
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> 70. We are of the view that this court in S.R. Batra V Taruna Batra (Supra) although noticed the defini-

> tion of shared household as given in Section 2(s) but did not advert to different parts of the definition which makes it clear that for a shared household there is no such requirement that the house may be owned singly or jointly by the husband or taken on rent by the husband. The observation of this Court in S.R. Batra V Taruna Batra (Supra) that definition of shared household in Section 2(s) is not very happily worded and it has to be interpreted, which is sensible and does not lead to chaos in the society also does not commend us. The definition of shared household is clear and exhaustive definition as observed by us. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in S.R. Batra V Taruna Batra (Supra) if accepted shall clearly frustrate the object and purpose of the Act. We, thus, are of the opinion that the interpretation of definition of shared household as put by this Court in S.R. Batra V Taruna Batra (Supra) is not correct interpretation and the said judgment does not lay down the correct law."

37. The question Nos.1 and 2 were therefore answered as under:

> "91. ... ...
>
> 91.1 The definition of shared household given in Section 2(s) cannot be read to mean that shared household can only be that household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share.
>
> 91.2 The judgment of this Court in S.R. Batra Vs Taruna Batra (Supra) has not correctly interpreted Section 2(s) of Act, 2005 and the judgment does not lay down a correct law.

38. While answering question No.(4) the Supreme Court expounded the import of the provisions contained in Section 26 of the DV Act, 2005. The Supreme Court enunciated that in view of the ratio laid down by the Supreme Court in the case of ***Vaishali Joshi Vs Nanasaheb Joshi***[4] the claim of the defendant

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4 (2017) 14 SCC 373,

that the suit property is shared household and she has right to reside in the house ought to have been considered by the trial court and non-consideration of the claim/defence is nothing but defeating the right, which is protected by the DV Act, 2005.

39. In the case of ***Vaishali Joshi*** (supra) the appellant was the daughter-in-law of the respondent. The husband of the appellant and the son of the respondent had left the appellant on the suit flat, which was allotted to the respondent. In the wake of the matrimonial proceedings, the respondent revoked the gratuitous licence and asked the appellant to stop use and occupation of the suit flat. And, eventually, filed a suit seeking mandatory injunction. The appellant resisted the suit contending that the suit flat was intended to be used by the joint family as a joint family property. The appellant filed a counter claim and prayed for an order of residence in the suit flat under Section 19 of the DV Act, 2005. The learned Judge, Court of Small Causes, held that the Court had no jurisdiction to entertain the counter claim. A revision against the said order did not succeed. The High Court also ruled against the appellant.

40. The Supreme Court after considering the provisions of the Provincial Small Causes Court Act, 1887 and DV Act, 2005

enunciated that, the Court of Small Causes had the jurisdictional competence to entertain and decide the counterclaim. The observations in paragraph 40 read as under:

> "40. Section 26 of the Act, 2005 has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by Act, 2005 is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court. When the proceeding initiated by plaintiff in the Judge, Small Causes Court alleged termination of gratuitous licence of the appellant and prays for restraining the appellant from using the suit flat and permit the plaintiff to enter and use the flat, the right of residence as claimed by the appellant is interconnected with such determination and refusal of consideration of claim of the appellant as raised in her counter claim shall be nothing but denying consideration of claim as contemplated by Section 26 of the Act, 2005 which shall lead to multiplicity of proceeding, which can not be the object and purpose of Act, 2005."
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> (emphasis supplied)

41. In the light of the aforesaid enunciation of law, reverting to the facts of the case at hand, The Appellate Bench was clearly in error in observing that the question as to whether defendant No.2 had any right to reside in the suit premises was beyond the remit of the jurisdiction of the Court of Small Causes. In view of the provisions contained in Section 26 of the DV Act, 2005 and in the context of the clear assertion by the defendant No.2 that she had a right to reside in the suit premises, being the wife of defendant No.1, it was incumbent upon the Appellate Bench to decide the question whether defendant No.2 was entitled to enforce her right of residence.

42. The evidence on record clearly establishes that defendant No.2 started to reside in the suit premises since the year 1999, much prior to the alleged conferment of exclusive tenancy rights upon the plaintiff. Moreover, the Appellate Bench also unjustifiably discarded the admissions elicited in the cross-examination of Pushpaben (PW1). Pushpaben (PW1) had conceded that she was unaware as to what was affirmed in the affidavit and she had simply put signature on the affidavit in lieu of examination-in-chief. She was unaware of its contents and had not gone through the same. She went on to concede that she had nothing to show that defendant No.2 was her licensee. She further added, rather candidly, how there could be licensor - licensee relationship with the children. (As recorded in vernacular, "लड़का लोग के साथ क्या लाइसेंस होगा" by the trial Court.) Lastly, she conceded in no uncertain terms that since defendant No.2 has right in the suit premises she was residing in the suit premises.

43. In the face of the aforesaid evidence, the Appellate Bench was not justified in taking a constricted view of the matter, and passing the decree for eviction. The learned Judge, Court of Small Causes was right in holding that the plaintiff had failed to establish that defendant No.2 was a gratuitous licensee. The

occupation of defendant No.2 was referable to her right to reside in the suit premises, which constituted the shared household, in view of the domestic relationship the defendant No.2 had both with Jitesh (D1) and the plaintiff. Therefore, the impugned judgment and decree deserves to be quashed and set aside.

44. Hence, the following order:

: O R D E R :

(i) The revision application stands allowed.

(ii) The impugned judgment and decree stands quashed and set aside.

(iii) The judgment and decree passed by the trial Court, in LE Suit No.36/42 of 2013 stands restored.

(iv) The suit stands dismissed.

(v) In the circumstances of the case, there shall be no order as to costs.

(vi) By way of abundant caution, it is clarified that the core issue before the trial Court was, whether the applicant is a gratuitous licensee and required to be evicted from the suit premises and the consideration in this revision is confined to the said aspect of the matter.

(vii) In view of disposal of revision application, IA/30503/2022 also stands disposed.

[N. J. JAMADAR, J.]