MHSCA1-001105-2022

PMHSCA10011052022_6_1

Exh.14/D in P.P. Of Exh.1

Appendix H, No. 4

Court of Small Causes, Mumbai, Appeal Court

IN THE COURT OF **Shri. Shrikant L. Anekar / Shri. R. U. Shaikh**

JUDGE C.R. NO. 1, Mumbai, Mumbai.

NOTICE TO SHOW CAUSE.

(GENERAL FORM)

Appeal A1/304/2022

The Cricket Club of India Vs Rutton Dinshaw Shroff Since deceased

NEXT DATE : 24-04-2026

To,

R-2 **The Unknown HLR of Rutton D Shroff Represented through the Registrar, Court of Small Causes, Bombay**

Office No 6 2nd Floor Stadium House Block No 3 Veer Nariman Road Mumbai 400020

at Lokmanya Tilak Road, Kalbadevi Mumbai 400002 .

Whereas in the above-named has made application to this Court that

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the **24-04-2026** at **11:00 O'clock in the forenoon**, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

Given under my hand and the seal of the Court, this **13-04-2026**

JUDGE C.R. NO. 1

Order Below Exh. 1 / order passed below Exh.13 (Amendment application) O- The appellants shall also ensure that notice of the present appeal is published on the official website of this Court, In addition, notice of filing of the appeal shall be displayed on the Notice Board of this Court and shall also be served by affixing the same on a conspicuous part of the suit premises, if not already done.

Visit **ecourts.gov.in** for updates or download mobile app **"eCourts Services"** from Android or iOS

The process is system generated and transmitted in secured manner by authorised user as such physical signature not applied.

Amendment carried out on 2nd April 2026 as per Order dated 30th March 2026 passed in Exhibit No.13

Sd/-

02.04.2026

IN THE COURT OF SMALL CAUSES AT MUMBAI

APPEAL NO.304 OF 2022

IN

R.A.E. SUIT NO. 835 / 1895 OF 1995

THE CRICKET CLUB OF INDIA)
a Company incorporated under Indian)
Companies Act, 1913, and having its Registered)
Office at Brabourne Stadium, Sir Dinshaw)
Vachha Road, Mumbai – 400 020) **... APPELLANTS**

V/s

1. **RUTTON DINSHAW SHROFF (since deceased)**
carrying on business in the name & style)
of D.D. Shroff And Company, Office No.6,)
2nd Floor, Stadium House, Block No.3, Veer)
Nariman Rd, Mumbai –400 020)
2. **The Unknown heirs and legal**)
Representatives of Rutton D. Shroff)
having last known address at D.D.Shroff &)
Co. at Office No. 6, Second Floor, Stadium)
House, Block No.3, Veer Nariman Road,)

Represented through the Registrar,)
Court of Small Causes, Bombay)
at Lokmanya Tilak Rd, Tak Wadi, Lohar)
Chawl, Kalbadevi, Mumbai - 400 002.)

3. **D.D.Shroff & Co.**)
A Partnership firm)
Having their address at D.D.Shroff & Co.)
Office No.6, 2nd Floor, Stadium House, Block)
No.3, Veer Nariman Road, Mumbai 400 020) **... RESPONDENTS**

MEMO OF APPEAL

1. The Appellants are original Plaintiffs. The Respondents are the original Defendants.

2. The facts in brief are as under:

   i) The Appellants are the landlords of the property known as "Stadium House" situated at Veer Nariman Road, Mumbai – 400 020. The Office No.6 admeasuring approximately 1200 sq.ft. on 2nd floor of the Stadium House was originally let out to one Mr. Rutton Dinshaw Shroff. The said Office No.6 is hereinafter referred to as "the Suit Premises".

   ii) The Suit Premises was leased to one Mr.Rutton Dinshaw Shroff under an Indenture of Lease dated 3rdDecember, 1954. The said Mr.Rutton Dinshaw Shroff was carrying on the business in the name and style of 'D.D Shroff & Co.' from the Suit Premises.

   iii) The Appellants filed an eviction Suit being R.A.E. Suit no. 835/1895 of 1995 against Mr.Rutton Dinshaw Shroff. After filing of the Suit, the Appellants came to know that the Mr.Rutton Dinshaw Shroff has expired. Accordingly, the Suit

was amended and proceeded against un-named heirs and legal representatives of Mr.Rutton Dinshaw Shroff and Respondents herein. The said R.A.E. Suit no. 835/1895 of 1995 was filed on the grounds of sub-letting, bonafide requirement of the Appellants and alterations and additions work carried out in the Suit Premises. The said Suit was contested by Respondent no. 3 in the present Appeal by filing Written Statement.

iv) Issues were framed on 30th October 2010 and additional Issues were framed on 11.09.2018.

v) Pending the said Suit, the Appellants found that the Suit premises was lying vacant, used and kept locked. The Appellants therefore filed an eviction Suit in the year 2018 being R.A.E & R Suit No. 1165 of 2018 for eviction on the ground of non-user of the Suit Premises. The said Suit was contested by Respondent no. 2 by filing Written Statement.

vi) The Appellants led evidence in the R.A.E. Suit no. 835/1895 of 1995 through their witness Nandini Dwivedi. However she left the services of the Appellants before commencement of her cross examination.

vii) On Respondent no. 2's Application, an Order came to be passed by the Hon'ble Court on 12thMarch, 2020 that both the Suit being R.A.E. Suit no. 835/1895 of 1995 and R.A.E Suit No. 1165 of 2018 were to be heard together by filing common evidence.

viii) The Appellants therefore led evidence through Mr Jaikishan Kumtekar (PW1) and through Dushyant Patel (PW2). The Appellants produced documents which were marked in Evidence.

ix) After completion of Appellants evidence, the Respondents chose not to lead any evidence in both Suits.

x) The Appellants in the said R.A.E. Suit no. 835/1895 of 1995 waived the ground of alterations and additions work carried out in the Suit Premises.

xi) Accordingly both the Suits were heard and subsequently by Judgment and decree passed on 21st October 2022 both the eviction were dismissed.

3. **BEING AGGRIEVED** by the Judgment and decree passed on 21st October 2022 in Court No. 14 in two eviction Suits being R.A.E. Suit No. 835/1895 of 1995 and R.A.E. Suit No. 1165 of 2018 dismissing both the suits (hereinafter referred to as 'the impugned judgment and decree') the Appellants file this Appeal to challenge the same in R.A.E. Suit No. 1165 of 2018 inter alia on the following amongst other grounds which are without prejudice to one another.

G R O U N D S

a) The impugned judgment and decree is contrary to law, justice, equity and good conscience.

b) The impugned judgment and decree is passed without application of mind and contrary to the facts, documents, evidence and circumstance on record.

c) The Trial Court erred in dismissing the suit. It ought to have granted decree in eviction on the grounds sought.

d) The Trial Court erred in answering Issues No. 1 & 2 in the negative and passing order for dismissal of the suit on Issues No. 3 & 4. The Trial Court ought to have answered Issues No. 1 & 2 in the affirmative and passed decree in eviction on Issues No. 3 & 4.

e) The Trial Court failed to appreciate the glaring omission that the Respondents did not step into the witness box at all nor produce any evidence, oral or documentary.

f) The Trial Court failed to appreciate that the Respondents did not offer itself for cross-examination.

g) The Trial Court was required to draw adverse inference in this regard against the Respondents, which it failed to do.

h) The Trial Court also failed to appreciate the glaring omission that the Respondents did not produce the documents to defend the ground of sub-letting, usage of the Suit Premises to show hardship that Respondents were likely to suffer.

i) The Trial Court completely failed to appreciate the bonafide requirement of the Appellants Club.

j) The Trial Court has completely misinterpreted the ratio of *2003(3) ALL M.R.967 in case of MrsR.E.Fanibunda vs M/s. Nicholas of India Ltd* and held that amended portion of the Plaint cannot be considered after Bombay Rent Act, 1999 was repealed.

k) The Trial Court completely erred in holding that amended portion of the Plaint cannot be considered after Bombay Rent Act, 1999 was repealed since the Suit was filed under Bombay Rent Act, on the basis of *2003(3) ALL M.R.967 in case of MrsR.E.Fanibunda vs M/s. Nicholas of India Ltd.*

l) The Trial Court ought to have considered the amended portion of the Plaint while considering the Issue no. 1 of the Suit on bonafide requirement of the Appellants.

m) The Trial Court erred in holding that at the time of filing the Suit the Appellants requirement was only for expansion of its activities and now their need has changed to provide facilities to its members including providing medical facilities to sports person. The Trial Court ought to have considered that Suit was filed in the Year1995 and so after 27 years the requirement is bound to change.

n) The Trial Court ought to have merely on evidence considered whether Appellants bonafide requirement of the suit premises or not rather get swayed by completely false reading and understanding of *2003(3) ALL M.R.967 in case of Mrs.R.E.Fanibunda vs M/s. Nicholas of India Ltd.*

o) The Trial Court erred in holding that the principal as held in various Judgments that 'landlord is best judge of its his needs and tenant cannot dictate him' is applicable only in cases where landlord an individual and not a Company.

p) The Trial Court ought to have held that 'landlord is best judge of its his needs and tenant cannot dictate him' is applicable to landlord who is Company also.

q) The Trial Court completely erred in holding that Appellants ought to have passed a Resolution for showing thatthey require additional premises.

r) The Trial Court completely erred in ignoring that the witness of the Appellants had deposed on the basis of the Resolution passed by the Appellants and the witness (employees) had specifically pleaded Appellants requirement.

s) The Trial Court completely erred in holding that all sports require larger area.

t) The Trial Court completely ignored that certain sports like table tennis, carom, chess etc do not require large area.

u) The Trial Court also completely ignored that certain facilities like library, coffee shop, lounge for members, café shop, do not require large area and Suit Premises admeasuring 1200 sq. ft. would be sufficient.

v) The Trial Court completely erred in getting swayed away by one stray statement of witness in cross examination that no document is produced to prove requirement.

w) The Trial Court ought to have seen the number of documents produced by the Appellants to show their activities and proof of additional area including cogent evidence led to that effect.

x) The Trial Court ought to have considered that Appellants Club is inter alia a sport club and to provide sports rehabilitation facilities is seen as part and parcel of the sports facilities.

y) The Trial Court completely erred in understating the true meaning and purpose of Memorandum of Association of Appellants.

z) The Trial Court erred in holding that the object of Memorandum of Association of Appellants does not provide for medical facility.

aa) The Trial Court in spite recording the ratio of *2014(6)Mh.L.J. 563 in Nana vs Prabhakar* that 'if tenant fails to find out alternative premises, he has no hardship' completely erred in disregarding the same by holding the same is applicable to the present case

bb) The Trial Court ought to have held that the ratio of *2014(6)Mh.L.J. 563 in Nana vs Prabhakar* is applicable to the present case and considered the Appellant's hardship accordingly.

cc) The Trial Court erred in completely ignoring Exhibit 104 being the Monthly Bulletins of the Appellants which shows various activities conducted by various departments ofthe Appellants club.

dd) The Trial Court erred in taking a narrow view that Appellants have not passed a Resolution to prove that they require additional premises, thereby completely ignoring the evidence led by the Appellants.

ee) The Trial Court completely erred in putting the entire onus of proving sub-letting and non user only on the Appellants.

ff) The Trial Court completely erred in holding that there is no need to draw adverse inference on the Respondents if they don't lead evidence.

gg) The Trial Court erred in holding that even to prove their hardship, the Respondent is not required to lead any evidence.

hh) The Trial Court erred in holding that Issue no. 2 in favour of the Respondents in spite of Respondents not leading any evidence to show/prove their hardship.

ii) The Trial Court ought to have held that Issue no. 2 against the Respondents since they did not lead any evidence to show/prove their hardship.

jj) The Trial Court completely ignored that the Suit was contested by Respondent no. 3 through its one Mr Ravi Arya and MrDharambir Singh Bist. It is not even the case of the Respondents that Mr Ravi Arya and MrDharambir Singh Bist are legal heirs and representatives of deceased tenant MrR.D.Shroff. In spite thereof the Trial Court has held that Respondents would suffer hardship.

kk) The Trial Court erred in not appreciating that the original tenants and/or its legal heirs being Respondent no. 2 were not using the Suit Premises and therefore hardship of Respondent no. 3 is required to be considered.

ll) The Trial Court without citing any reasons in the impugned Judgment has held Issue no. 2 in favour of the Respondents.

mm) The Trial Court have randomly and without any reasons held that Judgments/citations produced by the Appellants are not applicable for considering Bonafide requirement of the Appellants in the present case.

nn) The Trial Court ought to have held that Appellants have produced sufficient material on record, coupled with the evidence led by Appellants witness, that Appellants require the Suit Premises for their bonafide requirement.

oo) The Trial Court ought to have held that Issue nos 1 & 2 in favour of the Appellants

pp) The Trial Court erred in not considering the facts of the Suit while dealing with Issue no. 4(a) i.e on sub-letting.

qq) The Trial Court failed to understand the Issue with regard to sub-letting

rr) The Trial Court ought to have considered that the Suit Premises were let out to one Mr.Rutton Dinshaw Shroff and not to Respondent no. 3.

ss) The Trial Court ought to have considered that Mr.Rutton Dinshaw Shroff was then a Partner of Respondent no. 3 and conducting business of Respondent no. 3 from Suit Premises at the time of letting.

tt) The Trial Court completely lost sight of the fact that Suit Premises were let out to an individual i.e. Mr.Rutton Dinshaw Shroff.

uu) The Trial Court completely erred in concluding that Appellants made no efforts to discover the names of partners of Respondent no. 3

vv) The Trial Court completely ignored Exhibit 79 being Appellants letter dated 5th August 2004 addressed to Respondent no. 3 inter alia seeking names of Partners of Respondent no. 3.

ww) The Trial Court completely ignored Exhibit 81 being Appellants Advocates letter dated 13th March 2019 addressed to Respondent no. 3's Advocate inter alia seeking inspection of all Partnership Deeds of Respondent no. 3, names and address of Partners of Respondent no. 3 and designation of Mr Ravi Arya and Mr.Dharambir Singh Bist, who had signed the Written Statement on behalf of Respondent no. 3.

xx) The Trial Court completely ignored Appellants Application being Exhibit 74 in the Suit seeking direction of inspection of all documents sought by Exhibit 81 i.e. Appellants Advocates letter dated 13th March 2019.

yy) The Trial Court completely ignored its own Order dated 28th June 2019 below Exhibit 74 directing Respondent no. 3 to provide inspection of all documents sought by Exhibit 81 i.e. Appellants Advocates letter dated 13th March 2019.

zz) The Trial Court completely ignored Exhibit 83 by which Advocate for Respondent no. 3 evaded giving inspection of documents as ordered by court.

aaa) The Trial Court ought to have concluded that the Appellants made diligent efforts to discover the names of partners of Respondent no. 3.

bbb) The Trial Court completely ignored Exhibit 84 being extract of Registrar of Firm showing Respondent no. 3 firm being dissolved on 1st June 1967.

ccc) The Trial Court completely ignored Exhibit 84 which shoes that besides Mr.Rutton Dinshaw Shroff only Soli Dinshaw Shroff was partner of Respondent no. 3.

ddd) The Trial Court ought to have considered that only legal heirs of late Mr.Rutton Dinshaw Shroff was entitled to tenancy rights in the Suit Premises.

eee) The Trial Court ought to have considered that the Respondent no. 3 was not contesting the Suit through legal heirs of late Mr.Rutton Dinshaw Shroff.

fff) The Trial Court erred in ignoring that Mr Ravi Arya and Mr.Dharambir Singh Bist, who had signed the Written Statement on behalf of Respondent no. 3 had no relationship with late Mr.Rutton.Dinshaw Shroff nor did they have any

designation with Respondent no. 3 which was dissolved in 1967.

ggg) The Trial Court erred in ignoring that Mr Ravi Arya and Mr.Dharambir Singh Bist were in use of the Suit Premises in the guise of doing business of Respondent no. 3.

hhh) The Trial Court erred in ignoring the basic principles of 'burden of proof' while considering the ground of sub-letting that the onus of proving that the tenant is not using the suit premises is on the landlord. Once the landlord discharges the said burden, the onus shifts on the occupant to show/prove his right in the tenanted premises.

iii) The Trial Court erred in not applying the well settled principal of 'burden of proof' while considering ground of sub-letting, while deciding Issue no. 4(a).

jjj) The Trial Court ought to have held that the Appellant being the landlord has discharged the burden casted upon them of proving that tenant is not using the suit premises and that Mr Ravi Arya and Mr.Dharambir Singh Bist were in use of the Suit Premises in guise of doing business of Respondent no. 3.

kkk) The Trial Court ought to have drawn adverse inference against Respondent no. 3 for not leading evidence since Appellants had shown that Mr Ravi Arya and Mr Dharambir Singh Bist were in use of the Suit Premises in guise of doing business of Respondent no. 3.

lll) The Trial Court completely erred in ignoring that the reason why Respondent no. 3 did not lead evidence was because they would have got exposed on the ground of sub-letting.

mmm) The Trial Court completely erred in holding that there was no evidence to prove sub-letting.

nnn)The Trial Court ought to have held that the Respondent no.3 was unlawful sub-tenant in respect of the Suit Premises.

ooo) The Trial Court completely erred in holding that Issue no. 4(a) in negative.

ppp) The Trial Court ought to have held Issue no. 4(a) in affirmative

qqq) The Trial court erred in commenting upon the authorities cited by the Appellants and then not following the same and/or distinguish the same with valid reasons.

rrr) The Trial Court erred in finding that the Appellants are not entitled to reliefs.

sss) The Trial Court ought to have held that the Appellants are entitled to decree in eviction on all the grounds enumerated herein.

ttt) The Trial Court ought to have passed decree in eviction with orders for costs and mesne profits.

uuu)The impugned judgment and decree be quashed, set aside and reversed.

4. The Appellants crave leave to alter, vary, amend or delete the above grounds or any of them as and when require in the interests of justice and in the circumstances of the case.

5. The Appellants have not filed any other Appeal in this Hon'ble Court or any other Court against the said Judgment passed on 21st October 2022.

6. The impugned Judgment was passed on 21.10.2022. Certified copy was applied for on 21.10.2022 and was made ready on 05.11.2022 and annexed herewith. This Appeal is within time.

Dated, this _____ day of November 2022

Advocate for Appellants

IN THE COURT OF SMALL CAUSES AT MUMBAI

APPEAL NO.304 OF 2022

IN

R.A.E. SUIT NO. 835 / 1895 OF 1995

The Cricket Club of India ... Appellants

Versus

RuttonDinshaw Shroff &Ors. ... Respondents

True Copy

MEMO OF APPEAL

Dated this _____ day of November 2022

AMENDED MEMO OF APPEAL

Dated this 2nd day of April 2026

Mr. ANAND H. GANDHI
Advocate for Appellants
210, Hari Chambers, 2nd Floor,
58/64, Shahid Bhagat Singh Road,
Fort, Mumbai – 400 023.