MHSCA1-001106-2022

PMHSCA10011062022_7_1

Exh.16/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 2a/303/2022

The Cricket Club of India Vs The Unnamed HLR of Rutton D Shroff Represented through the Registrar, Court of Small Causes, Bombay

NEXT DATE : 24-04-2026

To,

Respdt 1 **The Unnamed 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.15 (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.15

Sd/-
02.04.2026

IN THE COURT OF SMALL CAUSES AT MUMBAI

APPEAL NO. 303 OF 2022

IN

R.A.E. & R. SUIT NO.1165 OF 2018

THE CRICKET CLUB OF INDIA)
a company incorporated under Companies Act,)
1913 & functioning under the provisions of the)
Companies Act,1956 & having its registered)
office at Brabourne Stadium, Dinshaw Vaccha)
Road, Churchgate, Mumbai400 020.)...**APPELLANTS**

V/s

1. **THE UNNAMED HEIRS AND LEGAL**)
REPRESENTATIVES OF RUTTON)
DINSHAW SHROFF, having the last known)
address at Office No.6, 2nd Floor, Stadium)
House, Block No.3, Veer Nariman Road,)
Mumbai–400 020)
Represented through the Registrar,)
Court of Small Causes, Bombay)
at Lokmanya Tilak Rd, Tak Wadi,)
Lohar Chawl, Kalbadevi, Mumbai - 400 002.)

2. M/s D.D. SHROFF & CO.)
a Partnership Firm)
having its office at 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, Bombay** – 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 had 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 Respondent no. 2 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. 2 in the present Appeal.

iv) Pending the said Suit the Appellants found that the Suit premises was lying vacant, unused and kept locked. The Appellants therefore filed 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.

v) The R.A.E Suit No. 1165 of 2018 was contested by Respondent no. 2 by filing a Written Statement.

vi) Issues were framed in the said Suit on 20th February 2020.

vii) As per the Order passed by the Hon'ble Court on 12th March, 2020 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 had already led evidence in 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, the Appellant then led evidence through Mr.Jaikishan Kumtekar (PW1) and through Mr. 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) Accordingly both the Suit were heard and subsequently by the impugned judgment and decree passed on 21st October 2022, both the suits 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 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 show usage of the Suit Premises.

i) The Trial Court failed to appreciate the glaring omission that the Respondents did not produce any documents to show that on 23.8.2016 they filed Application with BEST and obtained electric connection in the Suit Premises.

j) The Trial Court ought not to have accepted Respondents bare words that on 23.8.2016 they filed Application with BEST and obtained electric connection in the Suit Premises.

k) The Trial Court on bare words of the Respondents in pleadingsand without any documents, erred in coming to the conclusion that on 23.8.2016 they filed Application with BEST and obtained electric connection in the Suit Premises.

l) The Trial Court completely erred in appreciating that Plaintiffs had produced report of BEST (Exhibit 94) dated 5.12.2017 to show that electric consumption in the Suit Premises is zero.

m) The Trial Court also erred in appreciating that Plaintiffs had produced report of BEST (Exhibit 95) dated 24.8.2018 to show that since 28.12.2016 the electric meter is connected at the Suit

Premises and since September 2017 there is no record of electric consumption in the Suit Premises.

n) The Trial Court ought to have concurred on the basis on Exhibit 94 & Exhibit 95 that a commercial premises cannot be used by anyone for business purpose without an electric connection.

o) The Trial Court failed to properly apply the principals of 'burden of proof' under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999.

p) The Trial Court completely ignored that the burden lies on the tenant (Respondents) also to repel prima facie inference arising from cesser of user of the Premises.

q) The Trial Court completely ignored that Respondents did not enter the witness box and produce a single document to show their use of the Suit Premises. On the contrary, the Trial Court accepted bare words of the Respondents in pleading that they were using the Suit Premises and there was electricity connection in the Suit Premises. The Trial Court on the other hand chose not to accept Plaintiffs witness's evidence that he has seen that Suit Premises are not used and held that the witness has not produced any documents to show the same.

r) The Trial Court also ignored the fact that Exhibit 95 dated 24.8.2018 of BEST confirms that since September 2017 there is no record of electric consumption in the Suit Premises and yet chose to accept bare words (without any documents) of Respondents that on 23.8.2016 they filed an Application with BEST and obtained electric connection in the Suit Premises.

s) The Trial Court got swayed by immaterial documents dated 5.8.2004 which showed Respondents wanted to carry out work upgrading the Suit Premises. The Trial Court ought to have held that the letter of 2004 does not help Respondents since the non user of the Suit Premises is after 2016.

t) The Trial Court erred in concluding that zero consumption of electricity in the Suit Premises does not prove Suit Premises are unused.

u) The Trial Court erred in ignoring that Respondents did not produce any documents to show use of the Suit Premises while disregarding documentary evidence produced by the Appellants.

v) The Trial Court failed to appreciate that the Respondents were required to disclose documents to show user of the Suit Premises and the Trial Court was required to draw adverse inference in this regard which it failed to do.

w) The Trial Court ought to have disbelieved and rejected the say and contentions of Respondents.

x) The Trial Court erred in acting only upon the bare words of the Respondents in this regard which were not even supported by any corroborative evidence, either oral or documentary.

y) The Trial Court erred in misinterpreting the clear documents on record, and that too even without specific evidence from Respondents in this regard.

z) The Trial Court ought to have held that since there is no documents produced by the Respondent to show use of the Suit

Premises, the evidence produced by the Appellants is sufficient to show that Suit Premises are not used for a period of six months prior to filing of the Suit without any reasonable cause.

aa) The Trial Court completely erred in holding that onus was on the Appellants to prove that Respondents did not obtain electric meter in 2016. On the contrary the Trial Court ought to have held that Respondents have failed to prove that there was electricity in the Suit Premises.

bb) The Trial Court completely erred in holding that no evidence is produced by the Appellants to show that Respondents were not using the Suit Premises for a period of six months prior to filing of the Suit.

cc) The Trial Court was required to draw adverse inference in this regard and to hold that Respondents did not use the suit premises which the Trial Court failed to do.

dd) The Trial Court erred in ignoring the clear and direct contradictions in the Respondents case and the deliberate omissions to produce evidence and documents.

ee) The Trial Court ought to have held that the Appellants (landlord) have reasonably proved that Respondents are not using the Suit Premises for a period of six months prior to filing of the Suit and decreed the Suit.

ff) The Trial Court completely erred in holding that the Suit is barred by law of limitation.

gg) The Trial Court completely erred in holding that the Appellants had carried out amendment in the Plaint. In fact no amendment was carried out to the Plaint in the Suit.

hh) The Trial Court completely erred in holding that in spite of knowledge of R.D.Shroff's demise in 1996 the present Suit filed 2018 is against R.D.Shroff and subsequently amended. In fact the Suit was filed in 2018 against unknown legal heirs and representatives of R.D.Shroff in 2018 and it was never amended.

ii) The Trial Court completely erred in mixing up the Plaint and amendment carried out in R.A.E. Suit No. 835/1895 of 1995 and applied the same facts in the present Suit being R.A.E. Suit No. 1165 of 2018.

jj) The Trial Court completely erred in ignoring that Appellant had filed a Suit stating non user of the Suit Premises since many months prior to filing of the Suit and not for a period of more than 12 years as held.

kk) The Trial Court completely erred in comprehending the date of 'cause of action' in the present Suit.

ll) The Trial Court ought not to have held that the Suit is barred by limitation.

mm) The Trial court erred in commenting upon the authorities cited by the Appellants and then not following the same and that too without any attempt to distinguish the same.

nn) The Trial Court erred in not taking the authorities cited by the Appellants into consideration at all.

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

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

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

rr) 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.

5. 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.303 OF 2022

IN

R.A.E. & R. SUIT NO.1165 OF 2018

THE CRICKET CLUB OF INDIA

... APPELLANTS

V/s

THE UNNAMED HEIRS AND LEGAL REPRESENTAIVES OF RUTTON DINSHAW SHROFF & ANR. ... 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.