

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.6487 OF 2014

Smt. Rahimatbe w/o Noor Mohammed	]	
(Since Deceased) through legal representatives]		
a. Shri Bashir Shaikh Noor Mohammed,	]	
b. Shri Iqbal Noor Mohammad.	]	... Petitioner/ (Orig. Defendant)

Versus

Shri Rustam E. Irani (Rusi Seth).	]	... Respondent/ (Orig. Defendant)
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Mr. Jaydeep S. Deo for Petitioner.

CORAM :- M. S. SONAK, J.
DATE :- JUNE 29, 2015

P. C. :-

1. This petition challenges order dated 20/01/2014 made by the District Judge-16, Pune, allowing the Respondent's appeal and setting aside Judgment and decree dated 08/11/2005 made by the Additional Judge, Small Causes Court, Pune.

2. In this case, the suit premises has been described by the Petitioner as a square portion situated in North-West corner of the premises bearing Shop No.400, Center Street, Pune. There is further description that the suit premises comprised of a wooden khoka, fixed on the ground up to the level of the restaurant, admeasuring 5 ft. in

length East-West, 3 ft. in breadth North-South and 3 ft. in height. It is further averred that the square portion of the suit premises is in the inner portion of Persian Restaurant where a wooden cupboard is kept at the distance of 1 ft. inside inside from the northern boundary of plinth. All this is collectively described as the suit premises.

3. The Appeal Court, on the basis of pleadings as well as evidence on record, has rightly held that the suit premises cannot be regarded as '*premises as defined under Section 7(9) of the Maharashtra Rent Control Act, 1999*' and therefore the suit as instituted, was not maintainable. That apart, the suit in the present case was not really for recovery of possession but to seek injunction. The suit was instituted at a stage when the alleged possession had already been lost by the Petitioner.

4. In view of the aforesaid, there is no jurisdictional error in the making of the impugned order. There are no errors apparent on the face of record warranting interference in writ jurisdiction. Petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)