

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 402 OF 2015

Smt. Kamla R. Das & ors. .. Applicants
vs.
Allan S. D'Souza & anr. .. Respondents

Mr. D.S. Sabnis i/b. S.W. Kulkarni for the Applicants.
Mr. Vishwajeet P. Sawant a/w. Ms Mona Solanki i/b. M/s.Shah &
Sanghavi for the Respondents.

CORAM : M. S. SONAK, J.
DATE : 06 AUGUST 2015.

P.C. :-

1] This Civil Revision Application challenges the judgments and decrees dated 7 April 2011 and 23 April 2015 made by the Trial Court and the Appeal Court directing the eviction of the applicants from the suit premises on the ground of continuous non-user of the suit premises without reasonable cause for a period of six months prior to institution of the suit.

2] Mr. Sabnis, learned counsel for the applicants, submitted that the findings of fact recorded by the two Courts are vitiated by perversity, inasmuch as vital and relevant material in the context of electricity consumption, son's wedding and birth of grandson have been completely ignored. On the basis of such documents, it is clear that there was no non-user for continuous period as alleged and in

any case, in respect of some portion of this period, there was sufficient cause clearly demonstrated. Mr. Sabnis submitted that it is not sufficient to make a decree for eviction on the ground of mere non-user, but further the Court is required to consider whether there was any sufficient or reasonable cause for such non-user. This later aspect, according to Mr. Sabnis, has not at all been considered by the two Courts. For all these reasons, Mr. Sabnis submitted that the impugned judgments and orders are in excess of jurisdiction and liable to be set aside.

3] Mr. Sawant, learned counsel for the respondents, submitted that there are concurrent findings of fact recorded by the two Courts. The jurisdiction under Section 115 of the Code of Civil Procedure, 1908 (CPC) is not appellate and therefore, in absence of any perversity in the record of findings of fact, this Court ought not to interfere with the findings recorded concurrently by the two Courts. Besides, Mr. Sawant pointed out that the evidence from the Officials from the Electricity Department, Gas Supply Agency and the Rationing Department make it very clear that there was continuous non-user for six months without any reasonable cause. Mr. Sawant also pointed out that there is ample evidence on record that the

applicants reside in alternate premises and therefore, have kept the suit premises vacant.

4] Having heard the learned counsel for the parties and perused the material on record, in my judgment, there is no case made out to interfere with the concurrent findings of fact recorded by the two Courts. Under Section 115 of the CPC, this Court does not exercise appellate jurisdiction and therefore, it is not expected to re-appreciate the evidence on record. Suffice to state that the findings of fact recorded by the two Courts are borne out from the evidence on record. Therefore, this is not a case of either '*no evidence*' or for that matter ignorance of relevant or vital material on record.

5] The two Courts have considered the evidence of Officials from Electricity Department, Gas Supply Agency as well as Rationing Department. This evidence coupled with the documents produced on record indeed makes out a case of continuous non-user for a period in excess of six months prior to institution of the suit. The Official from the Electricity Department, in the context of bills for the relevant period has deposed that there was hardly any consumption and the bills were issued on basis of average. The Rationing Officer

has deposed that the Ration Card was canceled, since for four to five years, no rations were collected on the basis of such Card. No doubt, Mr. Sabnis submitted that the proceedings have been taken out in the context of such cancellation. Even if, this part of the evidence is excluded from consideration, the evidence led by the Official from Gas Supply Agency cannot be ignored. This Official has stated that since one and half year from the date of deposition, the gas cylinder is being supplied at the alternate premises at Gracian Rock Apartment. The Wedding Card of the son also did not indicate the suit premises as being the address. The applicant Nos.3 and 4 admittedly reside in the Gulf. The contention that the applicant No.1, who is an old lady does not get along with her daughter-in-law and therefore is required to reside alone in the suit premises hardly inspires any confidence and in any case such defence is not borne out from the evidence on record.

6] This is also not a case where explanation submitted by the applicants for non-user has been ignored. On the aspect of absence on account of birth of grandson at Nashik, in the first place, there are no pleadings. Secondly, the explanation has to be considered in the context of other relevant material on record. Same is the position

with regard to absence on account of the son's wedding. The applicants cannot use such isolated incidents and attempt to build some explanation on the basis of same. Upon consideration of evidence on record in its entirety, the ground for eviction has been made out as held by the two Courts concurrently.

7] Although, the acquisition of alternate premises may not be a ground for eviction, the record does indicate that the applicants have acquired alternate premises and are staying in such alternate premises. It is for this reason that the suit premises are not being used and the applicants merely desire to hold on to them. There is no perversity on the part of the two Courts in recording the findings of fact. There is no error of jurisdiction. There is not even any allegation of illegality or material irregularity.

8] For all these reasons, this Civil Revision Application is dismissed. There shall, however, be no order as to costs.

9] At this stage, learned counsel for the applicants, states that though the applicants do not desire to pursue the matter any further by way of challenging the decrees of eviction, the applicants require

some reasonable period of six months, in order to shift their belongings from the suit premises. Mr. Sawant, learned counsel for the respondents, opposes grant of any indulgence. However, the request of the applicants, in the facts and circumstances of the present case can be considered. Therefore, subject to the applicants and all adult members in their family filing, in this Court, the usual undertaking that they shall not part with possession or create any third party rights in the suit premises and further shall hand over the vacant and peaceful possession of the suit premises to the respondents on or before 28 February 2016, without fail, the respondents are restrained from executing the eviction decrees. The copy of such undertaking to be furnished to the learned counsel for the respondents before the same is actually filed in the Registry. If however, no undertaking is filed within two weeks from today, then there shall be no restraint upon the respondents-landlords executing the eviction decrees.

(M. S. SONAK, J.)