

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5938 OF 2016

Mohammed Adil Attarwala

..Petitioner.

Vs

Madhavlal N. Pittie and Ors.

.. Respondents

Mr. P.J. Thorat, Advocate for Petitioner.

Mr. B.N.Shukla i/b B.N.Shukla & Co, Advocates for Respondent no.1.

CORAM : R.G.KETKAR,J.

DATE : 18/07/2016

PC:

1. Heard Mr. P.J.Thorat, learned counsel for the petitioner and Mr. B.N.Shukla, learned counsel for respondent no.1 at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 1.8.2015 passed by the learned Judge, presiding over Court Room No.16 of the Court of Small Causes at Bombay below Exhibit-56 in R.A.E.Suit No. 228/356 of 2007 as also the Judgment and order dated 12.2.2016 passed by the Appellate Bench of the Court Small Causes at Mumbai in Revision Application No.311 of 2015. By these orders, the Courts below allowed the application filed by respondent no.1, hereinafter referred to as 'plaintiff', for deleting Issues no.1, 2, 4 and 7 that were framed on 21.7.2014.

3. By order dated 21.7.2014, the learned trial Judge framed the following issues:

1. Does the plaintiff prove that defendant nos 1 to 5 along with Mrs Sarawati Banerjee illegally parted with possession of the suit premises in favour of defendant no.6?
 2. Does the plaintiff prove that defendant nos. 1 to 5 became tenant after the death of Smt. S.B.Banerjee?
 3. Does the plaintiff prove that defendants are not using suit premises for the purpose for which it was let for a period more than six months since prior to institution of the suit?
 4. Does the plaintiff prove that defendant nos. 1 to 5 have illegally sublet the suit premises to defendant no.6?
 5. Whether the plaintiff is entitled to relief of eviction as prayed?
 6. Whether the plaintiff is entitled to perpetual injunction as prayed?
 7. Whether the plaintiff is entitled to mesne profits as prayed?
 8. What order and decree?
4. Mr. Shukla states that the plaintiff is not pressing ground of eviction under section 16(1)(e) of the Maharashtra Rent Control Act, 1999 (for short, 'Act'). He, therefore, prays for deleting issues no. 1 and 4.
5. Mr. Shukla further states that the plaintiffs have accepted that after the death of Ms. B.N.Banerjee, original tenant, tenancy rights in respect of the suit premises devolved upon respondents no.1 to 5. The plaintiff is, therefore, not pressing Issue no.2 and,

therefore, Issue no.2 may be deleted. He further states that the plaintiff is not pressing mesne profits and, therefore, Issue no.7 may be deleted. In other words, the plaintiff is pressing only ground of non user as contemplated by Section 16(1)(n) of the Act. Statements made by Mr.Shukla are recorded. In view thereof, I do not find that the Courts below committed any error in deleting Issues no. 1, 2, 4 and 7, extracted herein above, and restricting the suit only in respect of ground of non user in respect of Issue no. 3. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R.G.KETKAR, J.)