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

WRIT PETITION NO.6451 OF 1998

Shri Shankar Ganesh Pingulkar	]	
Age 53 years, residing at	]	
Junabazar, Sawantwadi	]	
District Sindhudurg	]	.. Appellant
		(Orig Defendant)

Vs

1.	Smt. Shardini Vishwas Nerurkar	]	
	Age 61 years	]	
2.	Shri Kishore Dattaram Sabnis	]	
	Age 54 years, Occupation	]	
	Service.	]	
3.	Smt. Sarojini Dattaram Sabnis,	]	
	Age residing at Holicha Kunth,	]	
	Junabazar, Sawantwadi,	]	
	Taluka Sawantwadi,	]	
	District Sindhudurg	]	.. Respondents
		]	(Orig. Plaintiffs)

Mr. G. H. Keluskar for the Petitioner.

Mr. Sudhir Prathu for the Respondent Nos. 1 to 3.

***CORAM : N.M.Jamdar, J.
Thursday, 17 November 2016.***

ORAL JUDGMENT :

By this petition the petitioner challenges concurrent judgment and orders passed by the learned Civil Judge, Junior Division, Sawantwadi and the learned District Judge, Sindhudurg,

whereby the suit filed by the Respondent landlord for seeking possession of the premises let out to the Petitioner was allowed.

2. The premises are residential premises being Grampanchayat House No. 783 situated within the limits of Municipal Council of Sawantwadi. The Petitioner was occupying part of the house on monthly rent of Rs. 50/-. The Petitioner paid rent up to 30th October 1984. Thereafter did not pay any amount from 1st November 1984 to 31st August 1990 and the arrears were to the tune of Rs.3636/-. A suit was filed by the Respondent-plaintiff bearing No.142 of 1999 seeking possession of the suit premises from the Petitioner on the ground that the Petitioner has become defaulter, since the rent has not been paid. The learned Civil Judge accepted the case of the Respondent-landlord and decreed the suit by the judgment and order dated 31st July 1996. This decision was confirmed by the learned District Judge by dismissing the appeal by order dated 29th August 1998.

3. Heard the learned counsel for the parties.

4. An affidavit has been filed by the Respondent-landlord on 11th July 2013, to which no rejoinder is filed till date, that the premises are collapsed and are no longer in existence. The learned counsel for the Respondents states that the Petitioner is staying elsewhere. The learned counsel for the Petitioner submits that he also does not have been any instructions from the Petitioner. It is therefore

clear that the premises is not in existence and the respondent is staying elsewhere.

5. As regard the default, the learned counsel for the petitioner submitted that the notice claiming arrears was not served. Both the courts have considered this submission. A finding of fact has been recorded that the Petitioner was served, notice was duly sent to the address of the Petitioner. The reason given by the Petitioner was that he was not available at the time when the notice was served. This has been negated by both the courts after assessing the evidence. The theory of the Petitioner that he was not in the premises when notice was served has not been accepted. There is no perversity in appreciation of evidence in that regard. No error can be found in the conclusion of both the Courts that notice was duly served. No other contention was advanced. In the circumstances, no case is made out for interference. The Writ Petition is dismissed. Rule is discharged. No costs.

(N.M.Jamdar, J.)