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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10941 OF 2014

M/s. Navjeevan Agencies

.Petitioner.

V/s.

M/s. JAK Properties & Investments & Anr.

..Respondents.

Mr.Mangesh Patil for the petitioner.

Mr.A.S. Daver i/b. J. Sagar for respondent No.1.

CORAM : N.M. JAMDAR, J.

DATED : 6TH DECEMBER, 2016

ORAL ORDER

The Petitioner-tenant has challenged the order passed by the Appellate Bench of the Small Cause Court and the order passed by the Small Cause Court whereby the application taken out by the petitioner to set aside the judgment and decree passed by the Small Cause Court on 5th August, 2011 has been rejected. The Respondent-plaintiff filed the suit in respect of the godown admeasuring 2106 sq. ft. Earlier a suit was filed by the respondent which was withdrawn on the ground that the leave and licence in favour of the Petitioner was subsisting. The present suit was filed on the ground of non user of the premises. The Petitioner did not file his written statement and the suit proceeded ex-parte. The

learned Small Cause Court Judge went through the entire evidence led by the Respondent, examined the photographs, documentary evidence such as electricity bills and noticed that the electricity supply was disconnected in the year 2000 and after satisfying himself that there was non user of the premises, decreed the suit. Thereafter, an application was filed for setting aside the ex-parte decree which was rejected by the learned Small Cause Court Judge. Appeal filed by the petitioner was dismissed.

2. The learned counsel for the Petitioner submitted that in the earlier suit, the petitioner has filed a say and there was no reason for the Petitioner not to do so in the present suit. He submitted that the instructions were given to the advocate who failed to file the written statement and conduct the case on behalf of the petitioner for which the petitioner should not be blamed. The learned counsel for the Respondent supported the impugned order.

3. The case of the Petitioner needs to be looked at in the context of allegation of non user of the premises. Both the Courts have observed that the Petitioner was not diligent. It was also the duty of the petitioner to enquire about the litigation with the advocate and participate and this duty does not go away merely because Vakalatnama is given to an advocate. As far as contesting the earlier suit is concerned, that by itself also cannot lead to a presumption that in the present case the petitioner was diligent.

4. The Respondent has executed the decree and has taken the possession of the suit premises. The present writ petition is filed in the year 2014 and it has been adjourned at the request of the petitioner on earlier occasions and there is no interim relief. On 29 November, 2016 none appeared for the petitioner and the matter was listed today for dismissal.

5. Considering this position, the view taken by both the Courts that the petitioner, having shifted from the premises had lost interest in prosecuting the litigation cannot be said to be an impossible view so as to warrant interference under the power of superintendence of this Court under Article 227 of the Constitution of India. Same apathy has continued even in this petition. Both the Courts have considered the case put up by the Petitioner in the correct perspective. Accordingly, no interference is warranted. The writ petition is rejected.

(N.M. JAMDAR, J.)