

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4906 OF 2017**

Indira Balaji Bidwai	...Petitioner
<i>Versus</i>	
Dilipkumar Pranjeevan Thakkar	...Respondent

Mr Vijay V Nene, for the Petitioner.

**CORAM: G.S. PATEL, J
DATED: 29th November 2017**

PC:-

1. Heard.
2. The Petitioner tenant takes exception to an appellate order dated 25th November 2016 dismissing her Appeal No.5 of 2015 against an eviction decree passed by the 2nd Joint Civil Judge, Junior Division, Kalyan, District Thane on 10th July 2012 in the Respondent's Regular Civil Suit No.456 of 2008.
3. The Respondent landlord brought suit seeking the Petitioner – tenant's eviction from Room No.10 on the 1st floor of Chandravilla, Building No.3 at Shivaji Chowk, Agra Road, Kalyan. The Plaintiff said that he had let this room to one Balaji Rambhau Bidwai on a monthly rent of Rs.52.50 excluding municipal taxes and other charges. Balaji

died on 14th February 1975. The Defendant came to occupy the premises thereafter. The rent was enhanced to Rs.108.64 including all taxes and other charges. The Plaintiff said that since 2003 the Defendant had abandoned use and occupation of the premises. She kept them locked. She went to reside elsewhere with her family members. The premises were not being maintained and were suffering continual damage.

4. The Defendant denied these allegations in her written statement. She said that she was still in occupation and possession and that this was uninterrupted. She also said that the premises were insufficient for her family members' residence. She has three sons and a daughter. The three sons resided elsewhere and her daughter had left for her matrimonial home. Yet the Defendant continued to reside in the suit premises.

5. The Trial Court framed issues, took evidence and ultimately decreed the suit. Before the Appeal Court, the Defendant urged that the decree was entirely incorrect. Four points for determination were framed in appeal. The first of these was whether there was non-user for a period of six months preceding the date of the suit.

6. The Appellate Court carefully re-examined the evidence that was on record. The central issue was non-user. In this context the Appellate Court examined the oral evidence including of PW-1 Dilipkumar Pranjeevan Thakkar. There was then a Deputy Engineer of the Maharashtra State Electricity Board ("**MSEB**") examined as PW-2. He deposed that an electricity meter no.020020161788 in the name of the Plaintiff was disconnected in 2001, the meter removed and the

supply never reconnected. This evidence, the Appeal Court was careful to note, had only a tangential value because the MSEB engineer could not say to which room this pertained. But this was not the basis on which the Appellate Court dismissed the Defendant's appeal. The Trial Court observed in regard to the testimony of PW-2 that merely because the engineer could not identify the room to which supply was disconnected, this could not and did not lead to the conclusion that the Defendant was in fact consuming electricity. This evidence was actually rejected by the Trial Court and the Appellate Court found, in contrast, that the electricity supply having been disconnected, the question that arose that was quite simply whether it was the supply of the Plaintiff or the Defendant that was disconnected. It turned out that this evidence could not be seen in isolation because the Defendant herself admitted that her electricity supply was disconnected in 2001. The Appellate Court therefore correctly read both pieces of evidence together and found as a matter of fact that the Defendant had never challenged the evidence that electricity was not being used by her nor produced any other evidence of use of power supply. All that the evidence of PW-2 established was that there was a disconnection in the year 2001, but when read with the Defendant's own evidence that it was the supply to her tenanted premises that was disconnected, this was sufficient. The Appellate Court therefore held it was impossible for the Defendant to have used the premises without any power supply. Leaving aside that there is also evidence of a disconnection of water supply, I should have expected the Defendant to have produced some sort of material in the form of some electricity bills or other documents showing continuous use. We are not even given the opportunity of examining the extent of any such use simply because the Defendant produced no such material at all.

7. All that is said is that the Appellate order is suffers from perversity or material irregularity because there are other documents such as a passport and ration card that show the address. But these documents only show the address. They do not establish actual use, and the question that is required to be addressed in such matters is not whether the tenant has an address at a given location but whether there is use of the tenanted premises. Conceptually these are two very distinct things.

8. I am unable to find any ground for interference. There is no perversity or irregularity.

9. The Writ Petition fails. It is rejected. No costs.

(G. S. PATEL, J.)