

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 6462 OF 2017**

Ambadas Trambak Katkar	...Petitioner
<i>Versus</i>	
Kanadi Panch Registered Trust Yeola & Ors	...Respondents

Mr Vaibhav D Kadam, *for the Petitioner.*
Mr RN Gite, *for Respondents Nos.1, 4 & 5.*

CORAM: G.S. PATEL, J
DATED: 23rd November 2017

PC:-

1. Heard. The tenant is aggrieved by concurrent findings of the Trial Court and the Appellate Court decreeing an ejectment action filed by the 1st Respondent. The Trial Court decree is dated 7th January 2011, in Regular Civil Suit No.77 of 2005. The Petitioner appealed and his Regular Civil Appeal No.55 of 2011 was dismissed on 23rd September 2016.

2. The Respondent sought eviction on distinct grounds: that the Petitioner was in arrears of rent; that he had not used the premises properly and had damaged them; that he had made material permanent alterations without permission; and finally that the Respondent trust required the premises for the purposes of that trust.

3. Before the Appeal Court one of the grounds taken was that the suit was not properly brought because all the trustees were not impleaded at the inception but only added later and that there was no resolution in regard to the eviction action. That objection has no substance and was quite correctly repelled by the Appellate Court.

4. As to the question of arrears of rent, the Plaintiff said the rent was Rs.30/- per month and that the Defendant was in arrears of rent computed at this rate. This was on the basis of an earlier agreement of 9th November 1983 executed by the parties. That document was allowed in evidence as Exhibit 54 and it stated the rent to be Rs.30/- for 11 months. Before the Appeal Court, and the Court below, it was argued that the correct rent was Rs.12/- per month. The Defendant tenant twice tendered rent computed at this rate, first on 8th March 2005 (Rs.3,641/-) and then again at a later stage of Rs.467/-. The Defendant had no evidence that the rent was Rs.12/- per month. Today, it is argued that there is a notebook which shows payment of Rs.12/- per month. That notebook is considered in paragraph 8 of the appellate order at page 81, where the Appellate Bench says the Defendant had recently created it. That notebook was, in any case, not in evidence, in contrast to the agreement signed by the Defendant which was, as Exhibit 54. The arrears of rent were therefore computed on the basis of a monthly rent of Rs.30/- there being no proof to show Rs.12/- as being the correct rent. Admittedly the tenant has not paid rent at the rate of Rs.30/-.

5. Then there is a question of bona fide requirement. The Defendant claimed that he had not found any alternative premises but that the Plaintiff trust had many properties in Yeola city. Before both

Courts, there was nothing to show that the Plaintiff trust had other properties. Even if they did, this was unlikely to have made a material difference, the Plaintiff being a charitable trust using its holdings for the benefit of the children of a particular community. On the other hand, the material before the Trial Court indicated that the Plaintiff had already moved into other premises owned by his son, an electrician, and his daughter-in-law, but has needlessly and without bona fide requirement held on to the tenanted properties.

6. Before me, it is not demonstrated that the impugned Appellate order suffers from any perversity, material irregularity or jurisdictional error. The writ jurisdiction of this Court is not to be used to be the substitute one view for another which was also eminently reasonable and plausible. There can be no question of entering into disputed questions of fact. The entire approach seems to be to treat this Writ Petition as a substantive first appeal. This is impermissible.

7. There is no merit in the Writ Petition. It is rejected. There will be no order as to costs.

(G. S. PATEL, J.)