

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

WRIT PETITION NO. 3672 OF 1994

1. Smt. Vimal Manohar Desai
2. Vilas Manohar Desai
3. Suryakant Manohar Desai
4. Chandrakant Manohar Desai,
all residing at 114, Budhwar Peth,
Karad, District Satara ...Petitioners

Versus

1. Kantilal Devchand Shaha,
r/a Shaniwar Peth, At and Post
Karad, District Satara

Since deceased through his Lrs.

A] Smt. Rajmati Kantilal Shah
Age about 62 years,
Occu: Household,

B] Sunil Kantilal Shah
Age about 52 years, Occu:

C] Sanjay Kantilal Shah
Age about 49 years, Occu:

D] Sandip Kantilal Shah
Age about 46 years, Occu:
Respondent Nos. A to D are
residing at Masur, Tal : Karad,

Dist : Satara.

E] Sou Sangita Rajesh Mehata
Age abut 40 years,
Occu: Household,
Residing at Vadakinala, Dist : Pune.

2. Shobha Pandurang Koparde,

3. Sunita Manohar Desai,
Nos. 2 and 3 residing at 114,
Budhwar Peth, Karad,
District Satara

4. Suhas Shankar Yadav,
residing at Mangalwar Peth,
Taluka Karad, District Satara

5. Bhimrao Keshav Kale,
residing at Shukrawar Peth,
Karad District Satara

...Respondents

Mr. Ramdas Shelke, for the Petitioners.

Mr. P.B. Shah, for the Respondent No. 1.

CORAM : N.M. JAMDAR, J.
DATE : 13 January 2017

ORAL JUDGMENT :

1. By this Petition, the Petitioners-tenants have

challenged the concurrent judgments and orders passed by the learned Civil Judge, Karad and learned District Judge, Satara decreeing the Suit filed by the Respondents-Landlords and dismissing the Appeal filed by the Petitioners.

2. The Respondents-landlords filed the Suit bearing No. 55 of 1980 in the Court of Civil Judge Junior Division, Karad seeking possession of the suit premises from the Petitioners on the ground of default in payment of arrears of rent from 1 July 1976 to 3 March 1980 and on the ground that the Petitioners have ceased to use the premises for the purpose for which they were let out for a period of six months prior to filing of the Suit that is on the ground of non user of the premises. Written statement was filed by the Petitioner. Parties led their evidence and suit was tried by the learned civil judge. The learned Civil Judge held that that pursuant to the notice issued by the Respondents-landlords, the Petitioners-tenants did not pay the rent, no application for fixation of standard rent was filed and the arrears of rent were not deposited before the first date of hearing in the Suit. The admission of the Petitioners' witness was also taken into consideration. As regards the case of non user, the learned Civil Judge held that though there was an application made by the original tenant for cancellation of Shop Act Licence, the factum of non user was not proved. Accordingly, by judgment and order dated 4 January 1989, the learned Civil Judge decreed the Suit and directed the Petitioners

to handover the possession of the suit premises. An Appeal No. 272 of 1989 was filed by the Petitioners in District Court, Satara. The learned District Judge confirmed the findings as regards the default in payment of rent and also upheld the ground of non user of the premises by the Petitioners. Accordingly, by judgment and order dated 6 July 1994, the learned District Judge dismissed the Appeal. Thereafter, the present Petition is filed.

3. I have heard Mr. Ramdas Shelke, the learned Counsel for the Petitioners and Mr. P.B. Shah, the learned Counsel for the Respondent No. 1.

4. Mr. Shelke, the learned Counsel for the Petitioners submitted on the ground of default that the notice dated 5 October 1979 terminating the tenancy did not specify statutory period and therefore, the notice was bad in law. It was contended that the tenancy was not a monthly tenancy, but yearly tenancy and therefore, the notice of termination on this ground was also bad in law. He also contended that notice was issued to one Kantilal Shah, who was not the owner of the suit property.

5. I have considered these submissions. After the notice was issued on 5 October 1979, no rent was deposited. No

application for standard rent was filed and an amount was deposited, amounting to Rs. 6,323/- on 16 December 1988 in the Suit vide Exh.37, after the evidence of Defendant No. 4 was over. Both the Courts have rightly taken note of the decisions of this Court that the first date of the Suit would be framing of the issues. There is a categorical admission by the witness of the Petitioners that these dues were not paid. As regards the contention now sought to be advanced, they were not urged in the Suit nor in the Appeal. No challenge was raised to the ownership of the Plaintiffs. It is for the first time in the Writ Petition that these grounds have been taken. The Bombay Rent Act, 1947 confers various protections on a tenant from eviction and the tenant is under obligation to continue to pay the rent. Even if this basic obligation is not fulfilled by the tenant, the Act still provides for specific stages to make good the default. Even these opportunities have not been availed of by the Petitioners. Therefore, both the Courts have rightly held that the Petitioners had committed default in payment of rent and were liable to be evicted on that count.

6. As regards the ground of non user is concerned, it is the case of the Petitioners themselves that the premises were being used as a shop for motors spare parts. Such shop cannot be conducted without a Shop Act Licence. It has come on record that an application was made by the tenant for cancellation of the licence on 6 February 1979. Thereafter, notice was issued on

5 November 1979. The Suit was filed on 3 March 1980 and it appears that in 1985 an application for renewal of licence was made. The learned District Judge has rightly taken note of the position that the subsequent user will not wash out the effect of the earlier non user. Though the learned Counsel for the Petitioners has sought to advance contentions regarding reason why such non user occurred, no such arguments advanced in the Courts below and the learned Trial Judge has not held in favour of the Petitioners on the ground that the non user of the premises was for any justifiable reason. In fact the learned Trial Judge held that there was no non user of the premises, which findings has been reversed by the Appellate Court by appreciating the evidence on record. Therefore, arguments advanced by the learned Counsel for the Petitioners on this count for the first time in the Writ Petition cannot be considered. It cannot be said that the view taken by both these Courts on appreciation of evidence, is perverse. In these circumstances, there is no merit in the challenge raised by the Petitioners to the impugned judgments and orders. The Writ Petition is accordingly, dismissed.

7. Rule is discharged. No order as to costs

8. At the request of the learned Counsel for the Petitioners, the interim relief granted in this Petition is continued for the period of six weeks, provided the Petitioners

file an Undertaking on affidavit in this Court within a period of these weeks from today that they alone are in possession and they will not create third party rights or part with the possession and will clear the arrears of rent. If no such Affidavit/Affidavits have filed within a period of these weeks, the decree will stand executable forthwith.

[N.M. JAMDAR, J.]