

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

CIVIL REVISION APPLICATION NO.751 OF 2013

Shri.Harischandra Dajiba Bagrao

...Applicant

Versus

Smt.Devisen Hiralal Lohar
(Since Deceased through Lrs)
Shri.Sunil Gajanan Gorane

...Respondent

Ms.V.S. Talkute i/b Mr.J.M. Puranik for the Applicant.

Mr.T.M. Nadar for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 03rd OCTOBER 2017

P.C.

1. Heard learned counsel for the parties.
2. The challenge in this petition is to the orders dated 04.02.2011 and 12.03.2013, by which the Trial Court and Appeal Court have concurrently returned the findings that the applicant-tenant has ceased to use the suit premises without any reasonable cause from the year 2000 onwards until the date of institution of the eviction proceedings some time in the year 2003.
3. Mr.Talkute, the learned counsel for the applicant

submits that the impugned orders suffer from jurisdictional errors because, in such matters, it is not sufficient that mere non-user is established but further, what has to be taken into consideration, is whether the non-user was with or without any reasonable cause.

4. Mr.Talkute, submits that in this case, the landlord by not repairing the septic tank, created a situation rendering it impossible for the applicant-tenant to continue to occupy the suit premises. Mr.Talkute submits that the landlord, cannot be permitted to take advantage of his own illegal and unauthorized acts and failure to discharge his statutory duties. Mr.Talkute submits that the adjacent tenant who was examined as a witness also deposed to the fact that the premises were not fit for habitation but stated that he is a retired person and considering his meager means there was no option for this witness, other than to continue to reside in the neighbouring premises. Mr.Talkute submits that the evidence of the witnesses as also the other evidence on record has not been appreciated by the two Courts in their proper perspective and therefore, the impugned eviction orders warrant interference.

5. Mr.Nadar, the learned counsel for the respondent submits that this is a case where two Courts have recorded

concurrent findings of fact and there is absolutely no perversity demonstrated by the applicant. Mr.Nadar points out that from the documents produced and the deposition of the witness from the Electricity Department, it is clear that for over three years, no electricity was consumed and the electricity connection stands disconnected. He submits that there is no evidence placed on record to establish that the suit premises have been rendered unfit for habitation on account of any acts of omission and commission attributable to the respondent-landlords. He submits that at no stage did the applicant raise any complaint in this regard but only after the eviction notice was served, did the applicant, raise such a plea, which, even otherwise, the applicant failed to establish. For all these reasons, Mr.Nadar submits that this petition may be dismissed.

6. Upon due consideration of the rival contentions and after perusal the material on record, I am, satisfied that this is not a case which warrants interference in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

7. In the first place, there are concurrent findings of fact and no perversity is demonstrated in the record of such findings of

fact. Both the Courts have given due weight-age to the evidence on record, which clearly establishes from the year 2000 onwards, that the applicant has not been using the suit premises. In fact, this position is even not seriously disputed by the applicant. The only contention of the applicant is that the landlord, has rendered the suit premises not fit for habitation by failing to discharge his statutory duties.

8. This is not a case where the defense that there was reasonable cause for not using the suit premises, has not at all been considered as contended by Mr. Talkute. Such defense has been considered however, upon appreciation of the material on record two Courts, have held that there was no reasonable cause shown for non-user of the suit premises. Two Courts have held that other tenants or licensees continue to occupy the premises in the immediate neighborhood. The two Courts have held that the applicant has not produced on record any complaint or correspondence with regard to the premises being unfit for habitation or the position of the septic tank which, according to the applicant, rendered the use of the suit premises unfit for habitation.

9. The Appeal Court in paragraph No.13 of its order has

held that the applicant, for the first time sought to raise such issues after the receipt of the eviction notice. The Appeal Court therefore holds that this defense, which, even otherwise, has not been proved by cogent evidence, is in the nature of after thought.

10. Although, acquisition of alternate premises, may not be a ground for eviction, the two Courts, have noted that the applicant resides with his son in premises which are almost three time in size and have far superior amenities. The Appeal Court has rightly, not ordered any eviction on the ground of acquisition of alternate premises. However, this circumstance, has been indicated only as an instance to demonstrate that the applicant has neither the need nor is the applicant is actually using the suit premises since the year 2000.

11. Upon cumulative consideration of all the aforesaid circumstances, there is no case made out to interfere with the impugned orders.

12. This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)