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

WRIT PETITION NO. 14137 OF 2016

Chandrakant B. Vartak (since deceased)
through legal heirs;

...Petitioners

vs

Shukla Yajurvediy Madhyandin Maharashtra
Brahman Madhyavarti Mandal

...Respondent.

.....

Mr I.M.Khairdi for the Petitioners.

Mr S.N.Chandrachood for the Respondent.

.....

**CORAM : B.P.COLABAWALLA J.
JUNE 07, 2017.**

P.C.:

This Writ Petition has been filed under Article 227 of the Constitution of India challenging the Judgment and Decree dated 11th March, 2014 passed by the 2nd Addl. Small Causes Judge, Pune in Regular Civil Suit No.276 of 2007 and the order of the Appellate Court dated 3rd October, 2016 passed by the learned Ad-hoc District Judge – I, Pune in Civil Appeal No. 230 of 2014. By both these orders, the Trial Court as well as Appellate Court upheld the ground of “**non-user**” as contemplated u/s 16(1)(n) of the Maharashtra Rent Control Act, 1999 (the “Act”) and proceeded to pass a decree of eviction against the

Petitioners.

2 The suit for eviction was filed by the Respondent herein (original Plaintiff) seeking to evict the Petitioners (original Defendants) on various grounds available under the Act. The grounds of eviction were (i) willful default, (ii) non-user and (iii) attempting to sublet.

3 It was the case of the Plaintiff – trust that it had purchased the suit property from the erstwhile owner on 7th April, 2006. The objects and aim of the trust was to provide residential accommodation to needy students who were financially weak. It was the case of the Plaintiff – trust that the Defendants had not paid the rent of the previous year, and therefore, the ground of default had been pleaded. It was further contended that the Defendants are not using the suit premises without reasonable cause, for the purpose for which it was let out, for a continuous period of six months immediately preceding the date of the suit. It was accordingly pleaded that the Defendants did not require the suit premises and sought eviction on this ground.

4 The Defendants filed their Written Statement and refuted the contentions of the Plaintiff. They denied that they were defaulters and further asserted that they were residing in the suit premises. It was pleaded that Defendant No.1(a) went to her daughter and used to return back in the evening. Similarly, Defendant No.1(b) also used to go for work and return back in the evening. It was, therefore, prayed that the suit be dismissed.

5 When the matter was heard by the Trial Court, the learned Small Causes Court Judge, Pune, refused to pass a decree on the ground of willful default and attempting to sublet. The decree was passed only on the ground as set out in Section 16(1)(n) of the Act, namely, that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

6 Being aggrieved by this order passed by the Trial Court, the Defendants preferred an appeal before the District

Judge, Pune being Civil Appeal No. 230 of 2014. Before the Appellate Court, the learned advocate appearing for the Defendants submitted that he will argue the appeal only on the ground of non-user. Learned advocate for the Plaintiff also submitted that he will not challenge the findings recorded against the Plaintiff as regards to willful default and attempting to sublet. These findings were accepted by the Plaintiff. It was on this basis that the Appellate Court heard the matter.

7 As far as the Appellate Court is concerned, it framed only one issue and that was **“Whether the Plaintiff prove that the Defendants are not using the premises without reasonable cause for the purpose for which it was let out for a continuous period of six months immediately preceding the date of the suit”**. This issue was answered in affirmative and in favour of the Plaintiff. The reasons given by the Appellate Court have been set out from pages 60 to 63 of the paper book.

8 Being aggrieved by these two orders, the original Defendants are before me as a Petitioners in the present Writ

Petition.

9 Mr Khairdi, learned advocate appearing on behalf of the Petitioners basically canvassed only three points before me to assail these orders. They are as follows:- (i) that the Trustees have not entered the witness box, and therefore, no weightage can be put on the evidence led on behalf of the Plaintiff – trust; (ii) that six months of non-user of the suit premises as contemplated in Section 16(1)(n) of the Act, has not been proved; and (iii) that the Trial Court as well as the Appellate Court failed to take into consideration comparative hardship as contemplated under Section 16(2) of the Act.

10 As far as this issue of comparative hardship is concerned, Mr Khairdi also relied upon a decision of this Court in the case of **Suresh D. Zamakade Vs. Narayandas V. Shah**¹. For all the aforesaid reasons, Mr Khairdi submitted that a clear case for interference under Article 227 of the Constitution of India is made out and this Court ought to quash and set aside the impugned orders.

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11 On the other hand, Mr Chandrachood, learned advocate appearing on behalf of the Respondent (original Plaintiff), submitted that the orders of the Trial Court as well as Appellate Court are well reasoned orders, requiring no interference under Article 227 of the Constitution of India. He submitted that both the Courts below have considered the evidence on record as well as the arguments canvassed on behalf of the parties, and thereafter, reached the finding that they have. By no stretch of the imagination these findings could be termed as perverse or indicating any error apparent on the face of the record requiring any interference under Article 227 of the Constitution of India.

12 Mr Chandrachood submitted that as far as the objection taken by Mr Khairdi that none of the trustees had entered the witness box is concerned, the same is factually incorrect. He submitted that as recorded in the Appellate Court order itself Mr Vishram Kulkarni was one of the trustees of the Plaintiff trust who had deposed in the matter. This finding of the Appellate Court has not even been challenged in the present

Writ Petition and neither was his authority to depose, ever challenged before the Appellate Court. He, therefore, submitted that this contention has absolutely no merit.

13 As far as the issue of comparative hardship is concerned, Mr Chandrachud brought to my attention section 16(2) of the Act and submitted that the issue of comparative hardship arises only when a decree is passed on the ground that the premises are reasonably and bona-fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held, or where the landlord is a trustee of a Public Charitable Trust, that the premises are required for occupation for the purposes of the trust [Section 16(1)(g)]. He submitted that in the facts of the present case, admittedly the decree has been passed on the ground of non-user which is covered under section 16(1)(n) of the Act. Therefore, the argument of comparative hardship is wholly erroneous. He submitted that in any event, there can never be a question of hardship when a decree of eviction is passed on the ground of non-user as there would then be a finding that the premises are not being used by the tenant at all.

14 As far as the issue regarding the suit premises not being used for a continuous period of six months is concerned, Mr Chandrachood submitted that this is purely a question of fact and appraisal of the evidence led by the parties. Both the Courts below after considering all the facts and properly appreciating the evidence, had come to a categorical finding that the premises have not been used for a continuous period of six months without reasonable cause, and therefore, proceeded to pass the eviction decree. Looking to all these facts, Mr Chandrachood submitted that there was no merit in this Writ Petition and the same to be dismissed with costs.

15 I have heard the learned counsel for parties at length and I have perused the papers and proceedings in the Writ Petition including both the impugned orders. I find considerable force in the argument canvassed on behalf of the Respondent (original Plaintiff). As far as the issue regarding the trustees not having entered the witness box is concerned, I find that the same to be factually incorrect. It is specifically recorded in the Appellate Court order that Mr Vishram Kulkarni is a trustee of

the Plaintiff Trust and has deposed before the Trial Court. There is also a resolution dated 12th November, 2010, authorizing Mr Vishram Kulkarni to depose in the matter. Over and above this, it is not even the case of the Petitioner before me in the Writ Petition that Mr Vishram Kulkarni is not a trustee of the Plaintiff Trust. Looking to all these facts, I am unable to accept the submission on behalf of the Petitioner that no trustee had entered the witness box, and therefore, the evidence led on behalf of the Plaintiff ought to be discarded.

16 As far as the comparative hardship is concerned, I find that the reliance placed by Mr Khairdi on Section 16(2) is wholly misplaced. Section 16(2) reads as under:-

“ 16. When landlord may recover possession. (1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(2) *No decree for eviction shall be passed on the ground, specified in Clause (g) of sub-section (1), if the Court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.*

Where the Court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the Court shall pass the decree in respect of such part only.”

As can be seen from the said Section, no decree for eviction can be passed on the ground specified in Clause (g) of sub-Section 1 of Section 16, unless the Court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

17 Since section 16(1)(g) is referred to in section 16(2) it would be opposite to reproduce section 16(1)(g) which reads thus:-

“ 16. When landlord may recover possession. (1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(a).....

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purpose of the trust”

Section 16(1)(g) empowers the landlord to recover possession from the tenant on the ground that the premises are reasonably

and bona-fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held etc. Section 16(1)(g) is not attracted when a landlord seeks to recover possession on the ground of non-user of the suit premises. That is squarely covered by Section 16(1)(n) of the Act and which reads thus:-

“16. When landlord may recover possession. (1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(a).....

(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit”

This being the position, I find considerable force in the arguments of learned advocate appearing for the Respondent that there is no question of comparative hardship in the facts of the present case. The question of comparative hardship as contemplated under Section 16(2) would come into play only when eviction is ordered under Section 16(1)(g) and not under Section 16(1)(n) of the Act. Even the decision relied upon by Mr Khairdi in the case of **Suresh D. Zamakade** (supra) is wholly

misplaced. In the facts of that case, the eviction decree was passed under Section 16(1)(g) of the Act and it was in that light, that this Court was of the view that the Appellate Court ought to have framed an issue regarding '**comparative hardship**' and decided the same before any decree could have been passed. It was in that light that the matter was remanded back. I find that this judgment is wholly inapplicable in the facts of the present case. I, therefore, have no hesitation in rejecting this argument.

18 As far as the argument regarding non-user for a continuous period of six months is concerned, I find that both the Courts below have come to the aforesaid conclusion after carefully appreciating the facts and weighing the evidence led by both the parties. The Appeal Court, especially, has dealt with this issue in paragraph Nos.8 to 10 of its Judgment. I do not think that the weightage given by the Courts below to the evidence led by the respective parties can, in any event, be termed as perverse or indicating any error apparent on the face of the record, requiring my interference under Article 227 of the Constitution of India. In my opinion, the Courts below have correctly appreciated the evidence and thereafter reached the

conclusions that they have. I do not see any reason for interfering with the same.

19 For all the aforesaid reasons, I find no merit in this Writ Petition and is accordingly dismissed. However, there shall be no order as to costs. Ad-interim relief granted earlier is vacated forthwith.

(B.P.COLABAWALLA, J.)