

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application (ST) NO. 21559 OF 2018

Techno Products (Bombay) Ltd.

And others

...Applicants

Versus

Laila E. Bharucha

And others

...Respondents

....

Mr. P.S. Dani, Senior Advocate i/b. Arpit Solanki i/b. Siddharth Bafna,
Advocate for the Applicants.

Mr. V.C. Ghosalkar, Advocate for Respondents No.1 to 4.

....

CORAM : R. G. KETKAR, J.

RESERVED ON : 05th SEPTEMBER, 2018

PRONOUNCED ON : 19th SEPTEMBER, 2018

ORDER :

1. Heard Mr.P.S. Dani, learned Senior Counsel for the applicants and Mr.V.C. Ghosalkar, learned Counsel for respondents No.1 to 4, at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the applicants, hereinafter referred to as the 'defendants' have challenged the judgment and decree dated 25.3.2015 passed by the learned Judge, Court Room No.12 of the Small Causes Court at Bombay in R.A.E. Suit No.1182/1905 of 2007 as also the judgment and decree dated 4.5.2018 passed by the Appellate Bench of the Small Causes Court at Bombay in (A-1) Appeal No.213/2015 and

Cross Appeal No.16 of 2015. Respondents No.1 to 4, hereinafter referred to as the 'plaintiffs' had instituted suit against the defendants for recovery of possession of plot No.1 and the structure standing thereon having C.S. No.45 of Kurla Division, admeasuring 3090 sq. ft. built up area plus a loft therein of 1000 sq. ft. and surrounding open space total admeasuring 7000 sq. ft. (for short, 'suit premises'). The plaintiffs have instituted the suit for eviction on three grounds, namely, (i) under Section 16(1)(n) (non-user), (ii) under Section 16(1)(e) (unlawful sub-letting by defendant No.1 in favour of defendant No.2) and (iii) under Section 16(1)(g) (reasonable and bonafide requirement) of the Maharashtra Rent Control Act, 1999 (for short, 'Maharashtra Rent Act'). By order dated 25.3.2015, the learned trial Judge decreed the suit only under Section 16(1)(n) of the Maharashtra Rent Act and negatived the grounds under Sections 16(1)(e) and 16(1)(g). The learned trial Judge directed the defendants to deliver possession of the suit premises to the plaintiffs and issued other directions.

3. Aggrieved by this decision, the defendants preferred (A-1) Appeal No.213/2015. The plaintiffs preferred Cross Appeal No.16/2015 as the learned trial Judge declined to pass the decree under Sections 16(1)(e) and 16(1)(g) of the Maharashtra Rent Act. By order dated 4.5.2018, the Appellate Court dismissed the appeal preferred by

the defendants and allowed the cross objections. The Appellate Court decreed the suit on all the grounds, namely, Sections 16(1)(e), 16(1)(g) and 16(1)(n) of the Maharashtra Rent Act. It is against these orders, the defendants have instituted present C.R.A.

4. In support of this application, Mr. Dani submitted that R.A.E. Suit No.777/2442 of 1981 was instituted by (1) M/s. Expert Metal & Enamel Works, (2) Ibrahim Abdul Husain Bharucha and (3) Ms. Laila Ibrahim Bharucha against the present defendants invoking grounds, among others, namely, (i) under Section 13(1)(g) (bonafide and reasonable requirement) and (ii) under Section 13(1)(e) (unlawful sub-letting by defendant No.1 in favour of defendant No.2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Bombay Rent Act'). He has taken me through the assertions made in paragraphs-4, 6 and 7 dealing with the ground of reasonable and bonafide requirement as also paragraph-8A of the said Suit dealing with the ground of unlawful sub-letting by defendant No.1 in favour of defendant No.2. The defendants resisted the suit by filing written statement. By order dated 25.10.1993, the learned trial Judge dismissed the suit. Mr. Dani has taken me through the findings recorded by the learned trial Judge in respect of grounds under Sections 13(1)(e) and 13(1)(g) of the Bombay Rent Act.

5. Aggrieved by that decision, the plaintiffs therein preferred Appeal No.251/1994. By order dated 16.6.1998, the Appellate Court dismissed the appeal. The plaintiffs therein preferred Writ Petition No.2809/1999 in this Court. During pendency of that Petition, present Suit is instituted on or about 19.11.2007. After disposal of the appeal in the present case on 4.5.2018, the plaintiffs therein simplicitor withdrew Writ Petition No.2809/1999 and the same was dismissed as withdrawn. Mr. Dani submitted that comparison of the assertions made in the earlier suit as also the evidence adduced in that suit and the assertions made in the present suit as also the evidence adduced by the plaintiffs leaves no room for doubt that on the basis of same assertions, the plaintiffs have instituted the present suit. The learned trial Judge decreed the suit only under Section 16(1)(n) of the Maharashtra Rent Act. As against this, while decreeing the suit on the ground of unlawful sub-letting under Section 16(1)(e), the Appellate Court observed that as the said ground is established, the sequitur is that defendant No.1 is not using the suit premises without any reasonable cause i.e. ground of non-user under Section 16(1)(n) of the Maharashtra Rent Act. He submitted that the earlier suit preferred by the plaintiffs invoking the same grounds on the basis of identical assertions was dismissed by the trial Court as also Appellate Court and Writ Petition was simplicitor

withdrawn by the plaintiffs therein. The Courts below were, therefore, not justified in decreeing the suit. In fact there was no material change in the pleadings as also evidence in the present round of litigation.

6. Mr. Dani submitted that tenancy agreement was entered into on 27.7.1978 between M/s. Expert Metal and Enamel Works, Kurla, Bombay-72, a Partnership Firm through its Partners (1) Ibrahim Abdul Husain Bharucha and (2) Mrs. Laila Ibrahim Bharucha (for short, 'owners') being the party of the First Part and M/s. Techno Products, a Partnership Firm through its Partners (1) Shri P.H. Savla and (2) Mr. D.S. Barkue (for short, 'tenants') being the party of the other part.

7. Defendant No.1 was converted into defendant No.2 Private Company. The learned trial Judge held that unlawful sub-letting is not proved by the plaintiffs. That apart in the earlier round of litigation, self-same allegations were made by the plaintiffs that defendant No.1 had unlawfully sub-let the suit premises to defendant No.2. After considering the material on record the Courts below had dismissed the suit and the Writ Petition instituted by the plaintiffs was withdrawn simplicitor. Thus the finding recorded in the earlier round of litigation in respect of unlawful sub-letting operates as resjudicata in the present proceedings. There is no material change in the pleadings as also evidence in the present round of litigation.

8. Mr. Dani submitted that in any case the defendants have made out reasonable cause for alleged non-user of the suit premises. He submitted that the defendants witness Barkur D. Shetty deposed that in view of the changed Government policy, the defendants had to discontinue the chemical manufacturing activities within the limits of Mumbai City and Greater Mumbai.

9. Mr. Dani submitted that insofar as the ground of reasonable and bonafide requirement under Section 16(1)(g) of the Maharashtra Rent Act is concerned, the Appellate Court was not justified in passing the decree on that ground. He invited my attention to the pleadings, the evidence adduced by the plaintiffs and the findings recorded by the Courts below in the earlier round of litigation. In the earlier round of litigation, even the plaintiffs examined plaintiff No.2 Tanvir Ibrahim Abdulhusain Bharucha. Plaintiff No.2 deposed that he also requires the suit premises for carrying on his business. After considering the material on record, the Courts below had dismissed the earlier suit. The ground of reasonable and bonafide requirement raised in the present suit is also based upon the same allegations. Mr. Dani submitted that during the course of cross-examination of PW-1 Tanvir it came on record that the plaintiffs had four galas in Udyog Mandir Industrial Estate. All these galas were sold by the plaintiffs. Gala in possession of

Evergreen Lightening Industries was sold one or two years after demise of his father. Father of PW-1 died in the year 2000-2001. Thus this also has adverse effect on the bonafide requirement of the plaintiffs. The Appellate Court was, therefore, not justified in decreeing the suit under Section 16(1)(g) of the Maharashtra Rent Act.

10. Finally, Mr. Dani submitted that a perusal of the tenancy agreement shows that the suit premises are given for the purposes of manufacturing. Section 2(1) of the Maharashtra Rent Act lays down that the said Act applies to any premises let out for the purposes of residence, education, business, trade or storage in the areas specified in Schedule-I and Schedule-II. In other words, the Act does not apply to the premises let for the purposes of manufacturing. Even on this ground also the Courts below were not justified in decreeing the suit.

11. On the other hand, Mr. Ghosalkar supported the impugned orders. He invited my attention to paragraphs-6 and 7 of the plaint where the plaintiffs have made out the ground of non-user under Section 16(1)(n) of the Maharashtra Rent Act as also paragraph-9 of the written statement. He submitted that the present suit was instituted on or about 19.11.2007. The suit summons was sought to be served on the address of the suit premises on 4.12.2007. The suit premises were found locked on 14.12.2007, 3.1.2008 and 9.1.2008. It has come on record

that the Watchman has been residing in the suit premises and there are no manufacturing activities or any business activities carried on in the suit premises.

12. He invited my attention to the evidence of the plaintiff No.2 Tanvir Ebrahim Bharucha and in particular paragraphs-9 and 10 of the examination-in-chief. In paragraph-9, PW-1 Tanvir deposed that consumption of electricity for manufacturing/factory purposes from September, 2005 onwards till November, 2007 remained Nil or very meager in respect of the suit premises.

13. Mr. Ghosalkar invited my attention to the evidence of Barkur D. Shetty and in particular paragraphs-3,4 and 9 of the cross-examination. In the cross-examination, the defendants witness Barkur Shetty admitted that Ramesh Singh, the Watchman of the defendant is staying along with his family since last six years. He further admitted that no manufacturing activity is carried out. He further admitted that no manufacturing activity is carried out in the suit premises since many years. The manufacturing activity of the defendants is carried out at Silvasa. He submitted that the defendants had produced electricity bills for the period of May, 2007 to October, 2007 which is the relevant period for considering the ground of non-user under Section 16(1)(n) of the Maharashtra Rent Act. The suit is instituted on 19.11.2007. He

submitted that the bills produced by the defendants shown that the electricity consumption as 'O' (Zero) units. He submitted that after appreciating the evidence on record the Courts below have decreed the suit on the ground of non-user as contemplated by Section 16(1)(n) of the Maharashtra Rent Act.

14. Insofar as the ground of unlawful sub-letting is concerned, he invited my attention to the written statement filed by the defendants in the present suit and in particular paragraph-8 thereof. In paragraph-8, the defendants dealt with paragraphs-4 and 5 of the plaint and contended that defendant No.1 firm had become a private limited company, defendant No.2. There is no transfer of interest between defendants No.1 & 2. Defendant No.1 firm is no more in existence and instead and in its place defendant No.2 company has come into existence without any transfer of interest in the tenancy rights to any outsider. The very names of defendants No.1 & 2 suggest that there is no transfer of interest in the tenancy rights. The defendants craved leave to refer to and rely upon the constitution of defendant No.1 firm and the Memorandum and Articles of Association of defendant No.2 company when produced. However, the defendants did not produce these documents. He has invited my attention to the findings recorded by the Appellate Court while dealing with the ground of un-lawful sub-

letting and submitted that the Appellate Court was justified in decreeing the suit under Section 16(1)(e) of the Maharashtra Rent Act.

15. Insofar as the ground of reasonable and bonafide requirement under Section 16(1)(g) of the Maharashtra Rent Act is concerned, he has taken me through the pleadings of the parties as also evidence adduced in the present proceedings as also in the earlier round of litigation. He submitted that the present suit is instituted setting up the requirement of plaintiff No.2. In the earlier round of litigation, it had come on record that the plaintiffs therein had a premises at Ambernath. In the present case, it has come on record that the premises at Ambernath is disposed of and is now no more available to the plaintiffs. Having regard to the requirement of plaintiff No.2 and the evidence on record, the Appellate Court was fully justified in decreeing the suit under Section 16(1)(e) of the Maharashtra Rent Act. He, therefore, submitted that no case is made out for interfering with the impugned orders.

16. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, the learned trial Judge decreed the suit on the ground of non-user as contemplated by Section 16(1)(n) of the Maharashtra Rent Act only and declined to pass decree

on the ground of unlawful sub-letting by defendant No.1 in favour of defendant No.2 as contemplated by Section 16(1)(e) and reasonable and bonafide requirement as contemplated by Section 16(1)(g). As against this, the Appellate Court dismissed the appeal preferred by the defendants allowed the Cross Appeal preferred by the plaintiffs and decreed the suit on all three grounds, namely, under Sections 16(1)(n), 16(1)(e) and 16(1)(g) of the Maharashtra Rent Act.

17. Insofar as the ground of non-user under Section 16(1)(n) is concerned, the learned trial Judge has dealt with this aspect from paragraphs-4 to 7. The suit is instituted on 19.11.2007. In terms of Section 16(1)(n) the relevant period would be the period of six months immediately preceding the date of filing of the suit. It is the case of the plaintiffs that the suit premises are locked since long and that for a period of more than six months preceding the date of filing of the suit same has not been used for the purpose for which the same was let out. The suit premises were let out to defendant No.1 for the purposes of manufacturing, formulations and blending of chemicals and other commercial purpose. It is the case of the plaintiffs that there are no activities of the defendants of manufacturing or other commercial activities are carried out in the suit premises and it is for the period more than six months for last preceding filing of the suit. In paragraph-5, the

learned trial Judge noted that the suit summons was sought to be served on the address of the suit premises on 4.12.2007. The suit premises was found locked on 14.12.2007, 3.1.2008 and 9.1.2008. Plaintiff No.2 also deposed that the Watchman has been residing in the suit premises and there are no activity of any manufacturing or other thing. The defendants witness Barkur D. Shetty deposed that the suit premises are used for the purpose of procuring and keeping of second hand storing containers. It is material to note that in the written statement the defendants did not come out with the case of non-user of the suit premises because of any reasonable cause. In fact the defendants have denied the allegations made in the plaint as regards non-user. In short, the defendants contended that they are using the suit premises for the purpose for which they were let out.

18. In paragraph-7, the learned trial Judge dealt with electricity consumption relating to the suit premises. After considering the evidence on record, the learned trial Judge concluded that the plaintiffs have established the ground of non-user.

19. As far as the judgment of the Appellate Court is concerned, the Appellate Court has dealt with the ground of non-user and ground of unlawful sub-letting from paragraphs-22 to 26. In paragraph-22, the Appellate Court noted that defendant No.1 was a Partnership Firm

comprising of the Partners, namely, Popatlal Savla and Dharamraj Shetty. Out of which Popatlal Savla died. Defendant No.1 is, therefore, no more in existence and in its place defendant No.2 company has come into existence. The Appellate Court observed that none of the Partners of defendant No.1 are part of defendant No.2. Mr. Dani submitted that Barkur D. Shetty, one of the Partners of defendant No.1 is also one of the Directors of defendant No.2 Company and that there is no transfer of interest including transfer of tenancy by defendant No.1 in favour of defendant No.2.

20. In paragraph-24, the Appellate Court observed that the merger of defendant No.1 into defendant No.2 is not consented by the landlords/plaintiffs. It was interse arrangement between defendant Nos.1 and 2 and thus it amounts to unlawful subletting by defendant No.1 in favour of defendant No.2 without consent of the landlord.

21. Insofar as the ground of non-user under Section 16(1)(n) of the Maharashtra Rent Act is concerned, the same is dealt with in paragraphs-25 and 26. The Appellate Court observed that as defendant No.1 has unlawfully sub-let the suit premises to defendant No.2, defendant No.1 is not using the suit premises for the purposes for which it was let out. It was further observed that defendant No.1 is not using the suit premises. The tenancy agreement provided that the suit

premises would be used for manufacturing, blending of chemicals and for any other commercial purpose. In paragraph-26, the Appellate Court confirmed the finding recorded by the learned trial Judge on the ground of non-user under Section 16(1)(n) of the Maharashtra Rent Act.

22. With the assistance of the learned Counsel appearing for the parties, I have perused the material on record. The ground of non-user is pleaded in paragraphs-6 and 7 of the plaint. The same is dealt with by the defendants in paragraph-9 of the written statement. The plaintiffs witness Tanvir Bharucha has deposed the ground of non-user in paragraphs-8 to 13. Though said witness was extensively cross-examined the defendants have not brought any admission of that witness dealing with the ground of non-user.

23. Insofar as the evidence of defendant's witness Barkur D. Shetty is concerned, in paragraph-5 of his examination-in-chief he deposed that as per the tenancy agreement the defendants are entitled to use the suit premises for manufacturing or for any other commercial purposes. In view of the changed Government Policy the defendants have to discontinue the chemical manufacturing activity within the limits of Mumbai City and Greater Mumbai. They are using the suit premises for the purpose of procuring, keeping the second hand storing containers. During the course of cross-examination, he admitted that the

defendants watchman Ramesh Singh is staying in the suit premises with his family since last six years. Insofar as the expression “commercial purpose” used in paragraph-5 of the examination-in-chief, he deposed that “commercial purpose” means the storage of the goods and “manufacturing purpose” means manufacturing of chemicals. He deposed that the defendants are using the suit premises for storage of containers and packing material only. It is true to say that there is no manufacturing activity in the suit premises since many years. Their manufacturing activity is at Silvasa. The defendants purchase the containers at Bombay stored in the suit premises and send it to Silvasa. In paragraph-9 he reiterated that no manufacturing activity is being carried out in the suit premises.

24. I have also perused the electricity bills produced by the defendants on record. The relevant period of six months prior to filing of the suit on 19.11.2007 would be from May, 2007 to October, 2007. A perusal of the electricity bills produced by the defendants for the months of May 2007, June 2007, July 2007, August 2007, September 2007 and October 2007 shows that the units consumed during this period was 'Zero'. Thus, the Courts below after appreciating the evidence on record have concurrently held that the plaintiffs have established the ground of non-user. After considering the material on record, I do not find any

good reason to take a different view from the one taken by the Courts below.

25. Insofar as the ground of unlawful sub-letting is concerned, in the written statement the defendants specifically contended in paragraph-8 that due to expansion of business in its natural course, defendant No.1 firm has become a private limited company, defendant No.2 herein. Defendant No.1 firm is no more in existence and in its place defendant No.2 company has come into existence without any transfer of interest in the tenancy rights to any outsider. The defendants craved leave to refer and rely upon the constitution of defendant No.1 firm and the Memorandum and Articles of Association of defendant No.2 company when produced. Mr. Ghosalkar submitted that the defendants did not produce these documents during the course of trial. Mr. Dani did not dispute said position. He, however, contended that self-same allegations were made in the earlier round of litigation and the same was turned down by the Courts below and the Writ Petition instituted was withdrawn unconditionally.

26. A perusal of the trial Court's decision in the earlier round of litigation as regards Section 13(1)(e) of the Bombay Rent Act shows that on behalf of the plaintiffs reliance was placed on the decision of this Court in **Dr. Nariman Aspansiar Irani v. Dr. Adi Nerwan Irani**, AIR

1989 BOM 362. In paragraph-12, the learned trial Judge observed that said decision is not applicable as there is no transfer of interest in favour of third person but the firm was continued by Dharmaraj Shetty who has converted his partnership firm into a private limited company.

27. Insofar as the Appellate Court is concerned, in unnumbered paragraph (internal page-16, running page-227), the Appellate Court dealt with the memorandum of Article of defendant No.2 company which showed that Barkur Shetty was the Managing Director and there are only two Directors. One of the other Directors is wife of Barkur Shetty. As mentioned earlier, in the present suit the defendants have not produced the Constitution of defendant No.1 firm, Memorandum and Articles of defendant No.2 company. These documents were relevant for the purpose of finding out whether Barkur Shetty continues to control the affairs of defendant No.2 Company. By not producing these documents, adverse inference is required to be drawn against the defendants. The defendants have withheld the vital information from the Court. I, therefore, do not find that the Appellate Court committed any error in decreeing the suit under Section 16(1)(e) of the Maharashtra Rent Act.

28. Insofar as the ground of bonafide requirement is concerned, Mr. Dani submitted that the assertions made in the earlier round of

litigation and in the present suit are one and the same. It is not possible to accept this submission for more than one reason. In the earlier suit filed by (1) M/s. Expert Metal & Enamel Works, (2) Ibrahim Abdul Husain Bharucha and (3) Ms. Laila Ibrahim Bharucha, the requirement of the plaintiffs No.2 & 3 were pleaded. It is no doubt true that in that case Tanvir Bharucha was also examined as a witness on behalf of the plaintiffs and further he also deposed his own requirement. In his evidence, he deposed that he started his factory in Ambarnath in or around 1983. In the earlier round of litigation, the learned trial Judge considered the ground of reasonable and bonafide requirement from paragraph-19 onwards. In paragraph-27, the learned trial Judge noted that during pendency of the suit the plaintiffs had sold an area of 3200 sq. ft. to Standard Tin Works and transferred the tenancy rights in the name of M/s. N.N. Industries which is having 3200 sq. ft. area. The plaintiffs also agreed to sell 149 square yards area in the name of the Standard Tin Works. It is in that context, in the earlier round of litigation, the learned trial Judge declined to pass decree on the ground of reasonable and bonafide requirement.

29. Insofar as the Appellate Court is concerned, in the internal page-34, running page-245 onwards, the Appellate Court dealt with said ground. The Appellate Court was also impressed by the fact that the

plaintiffs had sold the premises to the entities referred hereinabove. As against this, in the present case it has come on record that the plaintiffs have no business premises elsewhere. The plaintiffs' witness Tanvir Bharucha deposed in paragraph-14 of his examination-in-chief that he was doing only labour job business from Ambernath. Due to heavy losses suffered by plaintiff No.2, under compelling circumstances he has closed down his business from Ambernath. Defendant No.2 has commenced such business from rental premises in District – Varodra, Gujarat.

30. In paragraph-18, he deposed that he has extensive experience to do business of metal protective coating such as enameling, powder coating, P.T.E.E. coating, metalizing and manufacturing Domestic Water Heaters. Mr. Dani invited my attention to paragraph-2 of the cross-examination of the plaintiffs witness Tanvir Bharucha to contend that they have sold several premises in the recent past. The Appellate Court has dealt with this submission in paragraphs-18, 19 and 20. After considering the evidence on record, in paragraph-20, the Appellate Court observed that all the four premises mentioned in paragraph-19 were disposed of prior to 1980 that is to say even prior to filing of previous suit of 1981. A perusal of paragraph-2 of the cross-examination shows that insofar as the premises where the tenant Everglow Lightening Industries is concerned, it was sold to that tenant

after one or two years after the demise of Tanvir's father. It was sold to sitting tenant only. Mr. Dani was not in a position to point out that other premises were sold in a recent past. Thus the finding recorded by the Appellate Court in paragraphs-18 to 20 cannot be faulted with. Merely because some time in the year 2002-03 premises were sold to the sitting tenant will not militate against the bonafide requirement of the plaintiffs. Considering the evidence on record, I do not find that the Appellate Court committed any error in decreeing the suit under Section 16(1)(g) of the Maharashtra Rent Act.

31. Mr. Dani submitted that in view of Section 2(1) of the Maharashtra Rent Act, as the suit premises was let out for manufacturing purposes, the Maharashtra Rent Act is not applicable.

32. Mr. Ghosalkar submitted that said contention was not agitated before the Courts below and is sought to be agitated for the first time. Section 2(1) of the Maharashtra Rent Act lays down that said Act applies to any premises let out for the purposes of residence, education, business, trade or storage in the areas specified in Schedule-I and Schedule-II. The relevant portion of clause-4 of the agreement dated 27.7.1978 provides as under :

“4. The Tenants shall use the said premises for the purposes of manufacture, formulations, and blending of chemical and other allied products, and/or for any other commercial purposes.”

33. In other words the suit premises was not let out exclusively for manufacturing purposes, but, for any other commercial purposes. It is evident that the defendants did not raise this contention in the written statement. They also did not agitate this contention before the Courts below and said contention is agitated for the first time during the course of argument before this Court. The object of requiring a party to put forward his pleas in the pleadings is to enable the opposite party to controvert them and to adduce evidence in support of his case and it would be neither legal nor just to refer to evidence adduced with reference to a matter which was actually in issue and on the basis of that evidence, to come to a finding on a matter which was not in issue, and decide the rights of parties on the basis of that finding. That apart, the contention raised is a mixed question of law and fact, it is not permissible for the defendants to raise this contention for the first time in this Court. I, therefore, do not find any merit in this submission.

34. In the light of the aforesaid discussion, I do not find that the Courts below committed any error while decreeing the suit. Insofar as the ground of non-user under Section 16(1)(n) is concerned, the Courts below after appreciating the evidence on record have concurrently decreed the suit on this ground. The defendants are not in a position to

demonstrate that the findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. The defendants are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application fails and the same is dismissed with no order as to costs.

(R. G. KETKAR, J.)

Deshmane (PS)

Pradipkumar
Prakashrao
Deshmane
Digitally signed
by Pradipkumar
Prakashrao
Deshmane
Date:
2018.09.19
15:06:16 +0500