

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 126 OF 2019

Balasaheb Barku Pawar and others	... Petitioners
Versus	
Rikhabchand Manakchand Lalwani	... Respondent
....	
Mr. G. V. Wani, Advocate for petitioners.	
Mr. P. R. Katneshwarkar, Advocate for respondent.	
....	

CORAM : M. S. KARNIK, J.

DATED : 7th AUGUST, 2019

PER COURT :-

1. The petitioners by this revision application are challenging the judgment and decree dated 30.04.2019 passed by the District Judge-1, Jalgaon in Regular Civil Appeal No.227 of 2003 dismissing the appeal of the petitioners-tenants. The respondent-landlord had filed Regular Civil Suit No.228 of 1998 before the Joint Civil Judge, Junior Division, Chalisgaon for eviction on various grounds. The suit was decreed on the ground of change of user and the tenant making permanent construction without permission of landlord. Accordingly, the decree came to be passed by the trial Court on these grounds. The appellate Court confirmed the decree of the trial Court.

2. Learned counsel for the petitioners would submit that the findings recorded by the Courts below are not supported by the pleadings on record. In his submission, insofar as the change of user from residential into commercial is concerned, he would submit that in the plaint a case was made out that the premises in question are being used for tailoring shop. However, the findings as recorded by the appellate Court and the evidence as led by the tenant would indicate that in the premises there was S.T.D. P.C.O. booth functional. Learned counsel for the petitioners would therefore submit if it is the case of the landlord that the premises are being used for tailoring shop then there cannot be a decree on the ground as admittedly as per the own showing of landlord, in the premises there is a P.C.O.

3. I have gone through the findings of the Courts below. The Courts have concurrently recorded that having regard to the nature of the alterations made in the suit premises, the tenant has installed iron shutter which would clearly indicate that the premises are converted into a shop so as to use it for commercial purpose. This change in user, according to the Courts below, is without consent of the landlord.

4. Even as regards the permanent constructions being made without landlord's consent, the Courts below have held that the tenant has changed the wooden doors and installed iron shutter. Further, a

finding is recorded that a new room has been erected with shutters. Moreover, upon considering the evidence on record the Courts below came to a conclusion that the tenant has constructed a safety tank, latrine, one room abutting the road having iron shutter and roof of iron sheets and having recent plaster on the outer walls of the room. The said structure is held to be the permanent structure for which no permission of the landlord was obtained. In view of the concurrent findings recorded by the Courts below which is based on the materials on record, I see no reason to interfere with the findings of fact in the exercise of writ jurisdiction. The findings so recorded, cannot be said to be perverse so as to warrant any interference as the same are based on the evidence on record.

5. All other contentions raised by the learned counsel for the petitioners including the contention as regards compliance of Order XVIII Rule 3-A of the Code of Civil Procedure, 1908, being without any merit, stand rejected.

6. The Civil Revision Application is therefore, dismissed.

7. At this stage, the learned counsel for the petitioners would submit that the petitioners may be granted reasonable time to vacate the suit premises as they have been in occupation of the same almost

from 1948. His request is opposed by learned counsel for the respondent. However, considering the circumstances on record, I am of the opinion that subject to the petitioners filing usual undertaking in this Court within a period of three weeks from today, that they would vacate the premises by the end of February-2022, the petitioners are permitted to occupy the same till end of February-2022. In the event, the petitioners do not vacate the suit premises by February-2022, the same shall be construed as breach of undertaking to this Court, apart from landlord proceeding to take steps to execute the decree.

8. It is made clear that if the undertaking is not filed within three weeks from today, the landlord would be free to proceed further.

[M. S. KARNIK, J.]

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