

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

**CIVIL REVISION APPLICATION No. 89 of 2018**  
**WITH**  
**CIVIL APPLICATION No. 2141 of 2018**  
**IN**  
**CIVIL REVISION APPLICATION No. 89 of 2018**

Prakash S/o Shantilal Gadiya,  
age 58 years occupation business  
R/o Ward No. 7, Belapur road,  
infront of Mahavir Complex, Shrirampur  
Taluka Shrirampur District Ahmednagar.

**...Applicant**

**VERSUS**

Rajesh Surajmal Dakale,  
age 47 years occupation agriculture and business  
R/o Belapur road, Ward No. 7, Shrirampur  
Taluka Shrirampur District Ahmednagar,  
through General Power of Attorney  
Madanlal Chunilal Dakale,  
age 77 yers occupation agriculture and business  
R/o Belapur road, ward No. 7, Shrirampur  
District Ahmednagar

**..Respondent**

*Mr. N.R. Shaikh, Advocate for applicant*  
*Mr. S.S. Kulkarni, Advocate for respondent*

**CORAM : SUNIL P. DESHMUKH, J.**

**DATE : 10<sup>th</sup> January, 2019**

**ORAL JUDGMENT:**

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally by consent.

2. The respondent had instituted regular civil suit

bearing no. 40 of 2007 seeking eviction of present petitioner from suit premises on two grounds viz; bonafide requirement of the suit premises for personal use and other one, its non-user by the present applicant. The trial court had decreed the suit on both the counts. In appeal, however the finding recorded by the trial court with respect to bonafide requirement of the premises by the landlord has not been upheld and has been set aside. However, the finding recorded on the other ground of non-user of the premises by the applicant had been endorsed by the appellate court.

3. Learned counsel for the petitioner has vehemently contended that while the law requires specifically that non-user of the premises shall be for a continuous period of six months immediately preceding the date of institution of the suit, there is no such specific averment in the plaint and in the circumstances, the pleading is deficient of making out the case on the ground of non-user of the premises. He further purports to submit that the appellate court has cursorily considered the issue. He submits that a single witness in the form of electric meter reader has been examined, who visited for meter reading once in a month and no specific date had been mentioned. It has been elicited from him that he does not know the position about rest of other 29 days.

In the circumstances, on such evidence it would hardly be said that ground of non-user can be sustained. He, therefore, urges to allow the writ petition setting aside the finding recorded by the trial court and appellate court in respect of non-user of the premises.

4. On the other hand, learned counsel Mr Kulkarni for the respondent refers to the observations of the trial court as recorded in paragraphs No. 15 to 18 and, particularly, purports to underscore the observations of the trial court that the defendant in his cross-examination has admitted that the tap connection had been cut off since long and further admitted that since August, 2005 Mula-Pravara Electric Co-operative Society issued bill as 'Locked-Minimum', which had never been objected to and that the applicant has no enmity with the officials or employees of the said electricity supply society. He further goes on to submit that appreciation of evidence by the two courts is appropriate and would hardly be termed as not adhering to the factual position and cannot be condemned as perverse.

5. Having regard to aforesaid submissions and on perusal of paragraphs No. 15 to 18 of the judgment of the trial court and observations of the appellate court as would be appearing in paragraphs No. 11 and 12 of the judgment, the

courts have rightly held that the premises are not being used by the applicant for a quite long time. The suit appears to have been filed in the month of March 2007 and the evidence as have been scanned and appreciated by the two courts *hitherto*, shows that the period as contended on behalf of the applicant about six months immediately preceding the date of the suit, also has been considered. In view of the same, it does not appear that under the revisional powers of this court, any case can be said to have been made out. It does not appear that the orders of two courts *hitherto* are liable to be faulted with on any ground and the petition is therefore, not entertained and is dismissed.

6. Rule is discharged.
7. Interim relief stands vacated.
8. Civil application pending, if any, stands disposed of.

**( SUNIL P. DESHMUKH )**  
**JUDGE.**

*Madkar*