

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4413 OF 2017

Navin s/o Jamnadas Nathwani  
And ors.

... Petitioners

-vs-

Ashok Vallabhadas Manik

... Respondent.

Shri Madhur Deo, Advocate with Shri Rohit Joshi, Advocate for petitioners.  
Shri M. P. Khajanchi, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.  
DATE : April 05, 2019

P.C.

The petitioners who are the tenants-defendants are aggrieved by the decree for eviction as passed by the trial Court on the ground of non-user of the suit premises which decree has been confirmed by the appellate Court.

It is case of the respondent that the defendants were tenants of Block No.50 on Plot No.54/4 paying rent of Rs.85/- per month. According to the plaintiff, the defendants were in arrears of rent from January 1993. Similarly, since the suit premises was not being used for a period of six months prior to filing of the suit, the defendants were liable to be evicted. In the written statement the case of the plaintiff was denied. According to them pursuant to an oral partition between defendant Nos.1 and 2 the premises were given to the defendant No.3. Though the amount of arrears were sent by cheque the same was not

accepted by the plaintiff.

2. The parties led evidence and the trial Court after considering the same directed eviction on the ground of non-user under provisions of Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, the said Act). The appellate Court has confirmed that decree.

3. Shri M. Deo, learned counsel for the petitioners submitted that the averments in the plaint did not satisfy the requirements of Section 16(1)(n) of the said Act. The evidence on record as regards non-user was in relation to the period after filing of the suit. The suit in question was filed on 03/02/2006 while the electric bills at Exhibits-61 to 72 were for the period after April 2006. Placing reliance on the decision in **C. R. Shaikh vs. Lilabai D. Rohida and anr. 1981 Mh.L.J. 437** it was submitted that in absence of any pleadings that “without reasonable cause” the defendants had not used the suit premises, the decree under provisions of Section 16(1)(n) of the said Act could not have been passed. As regards the report of the bailiff at Exhibit-24-A it was submitted that the same was not a public document and unless its contents were duly proved it could not be relied upon. Reliance in that regard was placed on the decision in **Sushilkumar Mandanlal Ganediwar vs. Vijaykumar Mandanlal Ganediwal** in Writ Petition No.79/2017 decided on

20/12/2018. It was thus submitted that the Courts had not appreciated the evidence on record and the same has resulted in the eviction of the defendants.

4. Shri M. P. Khajanchi, learned counsel for the respondent supported the impugned judgment. According to him both the Courts have concurrently held that there was non-user of the suit premises for a period of more than six months prior to filing of the suit. The burden that was placed on the defendants was not discharged. He referred to the decision in *Gopaldas Khushaldas Parmar vs. Sanmukhlal P. Shah 2012(4) Mh.L.J. 599* to submit that such burden was on the tenant and submitted that the decree for eviction did not warrant any interference.

5. Heard the learned counsel for the parties and perused the material on record. In the plaint it has been pleaded that the defendants had discontinued their business which was being run in the suit shop. The premises were kept closed for the last two years and that the defendants did not require the said premises. The provisions of Section 16(1)(n) of the said Act contemplate non-user of the premises for a period of six months without reasonable cause prior to filing of the suit. It was pleaded by the plaintiff that the suit premises were not in use for a period of more than six months. As observed in *Gopaldas Khushaldas Parmar*

(supra) the burden was on the tenant to indicate reasonable grounds for such non-user. The pleadings in that regard are not found in the written statement. The evidence on record has been accepted by both the Courts to hold that there was non-user of the suit premises for a period of more than six months. The defendants did not place on record any positive evidence to indicate their occupation of the suit premises.

6. As regards the report of the bailiff at Exhibit-24-A it is seen that the defendants did not object to the said report of the bailiff being marked as exhibit and thereafter being referred to. No such objection was raised even before the appellate Court. In this backdrop therefore such grievance especially with regard to admissibility of the bailiff's report cannot be raised for the first time in this Court. Hence the ratio of the decision in *Sushilkumar Ganediwal* (supra) does not support the case of the petitioners.

7. It is found that the Courts have taken into consideration all relevant material before holding in favour of the plaintiff. In absence of any jurisdictional error there is no reason to interfere in writ jurisdiction. The Writ Petition of therefore dismissed with no order as to costs.

**JUDGE**