

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4594 OF 2021

Deju Khuddu Mullyya	]	
Age : 66 years, Occu : Business,	]	
R/o. Row House No.3, Behind Gangotri	]	
Bunglow, Banpurkar Colony, Super Market,	]	
Karad, Dist. Satara.	]	... Petitioner.

V/s.

1. Pharin Farid Ali Patel	]	
Age : 54 Years, Occu : Household,	]	
2. Alim Farid Ali Patel,	]	
Age : 28 Years, Occu : Education,	]	
3. Hamid Farid Ali Patel	]	
Age : 33 Years, Occu : Business,	]	
All R/o. 101, Budhwar Peth, Karad,	]	
Tal. Karad, Dist. Satara.	]	... Respondents.

Mr. Pratap Patil, Advocate for Petitioner.

Mr. Vishal Kanade a/w Mr. Harsh Trivedi, Advocate for Respondent Nos.1 to 3.

CORAM : A. S. GADKARI, J.
RESERVED ON : 2th DECEMBER 2021.
PRONOUNCED ON : 21st DECEMBER, 2021.

JUDGMENT :

1. Petitioner/original Defendant/Tenant has invoked jurisdiction of this Court under Article 227 of the Constitution of India, questioning the

legality, validity and propriety of the impugned Judgment and Order dated 29th January 2020 passed by the learned District Judge-1, Karad in Regular Civil Appeal No.62 of 2018, dismissing the Appeal preferred by the Petitioner and confirming the Judgment and Decree dated 26th March 2018 passed by the learned 5th Joint Civil Judge, Junior Division, Karad at Karad, District Satara in Regular Civil Suit No. 199 of 2013.

By the said Judgment and Decree dated 26th March 2018, the Trial Court has allowed and decreed the suit filed by the Respondents and has directed the Petitioner to handover vacant possession of the suit property to the Respondents within the stipulated period as mentioned therein.

2. Heard Mr. Pratap Patil, learned counsel for the Petitioner and Mr. Vishal Kanade, learned counsel for the Respondents. Perused entire record.

3. Respondents are successors of deceased Farid Ali Patel. Respondent No.1 is the wife and Respondent Nos. 2 and 3 are the sons of the deceased Farid Ali Patel. Deceased Farid Ali Patel had let out suit premises, i.e. shop No.3 on final plot No.38 in basement/ground floor at Shaniwar Peth, Karad, more specifically mentioned in para No.1 of the plaint in R.C.S. No.199 of 2013, to the Petitioner by executing an Agreement of Lease dated 12th April 1989 (Exh.55), on monthly rent of Rs.1600/- for a period five years only. As per the said agreement, use of suit premises was restricted to the purpose of hotel business only. Petitioner was not permitted to sublet the suit premises or

carry on any other business than it was let out. In the year 2010, Petitioner changed use of suit premises and started lottery business in it without prior consent of the Respondents. Petitioner also sublet suit premises to Mr. Kiran V. Patil on rent of Rs.3,000/- per month and had also accepted deposit of Rs.20,000/- from him.

Respondents required suit premises for running their own business. The Respondent No.3 had completed his course of Travel Management and the Respondent No.2 had completed his education as B.E. (Computer). Respondents were willing to carry out their independent business and therefore also they required suit premises. Respondents therefore issued notice (Exh.63) for termination of lease w.e.f. 31st March 2013. Petitioner replied (Exh.64) the said notice and denied its contents and did not handover vacant and peaceful possession of the suit property to the Respondents.

4. In this brief premise, Respondents filed R.C.S. No.199 of 2013 on the grounds of breach of the rent agreement dated 12th April 1989, change of user, subletting & bonafide requirement as contemplated under Section 16(1) (a), (e)(iii) & (g) respectively of the Maharashtra Rent Control Act, 1999 (for short, 'Rent Act').

5. After receipt of suit summons, Petitioner appeared and filed his Written Statement at Exh.12 and denied the suit claim in its totality. He contended that, late Farid Ali Patel had agreed to continue with the suit

premises even after the period of five years and therefore after his demise also the Respondents continued to accept rent from him till July 2011, either by cheque or cash. Petitioner further contended that, Respondent No.2 owns a shop bearing No.4 at 'Shivrushti Sankul' situated at Shaniwar Peth, Karad and is carrying out a business therefrom in the name of 'Mobile Zone'. That, the business of Respondent No.2 is well settled and therefore there is no bonafide need of suit premises to Respondents. That, Respondent No.3 is a student and therefore also the Respondents are not in bonafide need of suit premises. Petitioner on the contrary contended that, he does not have any other place to carry out his business and he is in need of the suit premises. It is further contended by the Petitioner that, he continued with the hotel business till 2010, however due to some difficulties he closed it and since 19th March 2010, he started Online Lottery Center under the name of 'New Sanika Lottery Centre' in partnership with Mr. Kiran V. Patil, who was holding a valid licence for the said business. Petitioner further admitted that, he had instituted the suit bearing R.C.S. No.393 of 2012 against the Respondents for perpetual injunction, which is pending before the Competent Court at Karad. Petitioner therefore prayed that, the suit instituted by the Respondents be dismissed.

6. Considering the pleadings of rival parties, Trial Court framed issues and additional issues below Exh.13. Respondents examined Respondent

No.3 (Exh.18) on behalf of Respondents. The Respondents produced on record Agreement of Lease (Exh.55); Notice of termination of lease (Exh.63); Reply to the notice of Petitioner (Exh.64); Certified copy of deposition of Mr.Kiran V. Patil (Exh.48) and Petitioner (Exh.46) in R.C.S. No.393 of 2012. Petitioner examined himself (Exh.54) in support of his case. Trial Court after recording evidence and hearing the learned Advocates for the respective parties, decreed the said suit in favour of the Respondents, by its Judgment and order dated 26th March 2018. Petitioner is unsuccessful before the first Appellate Court in Regular Civil Appeal No.62 of 2018.

7. Perusal of record indicates that, in his cross-examination, petitioner has admitted that, in the R.C.S. No.393 of 2012 instituted by him, his statement was recorded. That, the statement of Mr.Kiran V. Patil was also recorded in the said suit. He has admitted that, since the year 2010 he did not renew the licence of hotel. That, he has started running lottery business in the suit premises without permission of the Respondents. Though the licence to run lottery center is in the name of Mr.Kiran Patil, there is no agreement between him and Mr.Kiran Patil for the same.

8. In view of the aforestated clear admissions given by the Petitioner, it is crystal clear that, he had changed the user of suit premises from running the hotel business into conducting a lottery center. It is undoubtedly against the agreed terms of Lease Deed/Agreement dated 12th April 1989. The

contention of Petitioner that, he was running the said lottery center in partnership with Mr.Kiran Patil, can not be accepted because the Petitioner did not produce on record any documentary evidence to support the same. In his deposition recorded in R.C.S. No.393 of 2012, the Petitioner has conceded that, he earns Rs.3,000/- per month from Mr.Kiran Patil as a rent. That, he had received Rs.20,000/- towards deposit from Mr.Kiran Patil. The Petitioner has conceded to the fact of this transaction of subletting the suit premises to Mr.Kiran Patil under the guise of partnership with him without there being any cogent proof in that behalf. Petitioner is profiteering from the suit premises and is not using it for the purpose for which it was let to him.

As noted earlier, the Petitioner has admitted in his cross-examination that, he permitted Mr.Kiran Patil to use the said suit premises by accepting monetary consideration from him and without prior permission from the Respondents. This fact clearly establishes that, the Petitioner has sublet the suit premises to Mr. Kiran Patil.

9. The claim of Respondents for bonafide requirements of the suit property has practically gone unchallenged. The factum of comparative hardship would certainly weigh in favour of the Respondents. As noted earlier, the Petitioner has committed a clear breach of Lease Deed dated 12th April 1989, thereby changing the user of suit premises and has sublet it to Mr. Kiran Patil.

10. It is the settled position of law that, landlord is the best judge of his bonafide requirements of the premises given on rent to the tenant. Respondents have thus proved beyond doubt that, Petitioner has committed breach of agreement of lease by changing the user of suit premises without there prior consent. It is further proved that, the Petitioner has unlawfully sublet the suit premises without their consent to third person namely Mr.Kiran Patil. The need of bonafide requirement of the Respondents of the suit premises has been duly established by them and therefore the Respondents are entitled to recover possession of the suit premises from the Petitioner.

11. There are concurrent findings recorded by both the Courts below. Perusal of impugned Judgments and Orders clearly reveal that, both the Courts below have not committed any error either in law or on facts while passing the impugned Judgments and Orders. There are no merits in the Petition.

Petition is accordingly dismissed.

[A.S. GADKARI, J.]