

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

CIVIL REVISION APPLICATION NO. 77 OF 2021

Ravi Hiralal Bomble,
Age : 57 years, Occu. Labour,
R/o. Udasi Math, Behind Alankar Talkies,
Kabadi Mohalla, Jalna,
Tq. & Dist. Jalna.

....Applicant

Versus

1. Bhikchand s/o Lalchand Malani,
Age : Major, Occu. Retired Servant,
R/o. Jalna, at Present Mohan Electronics,
Lokmat Nagar, CIDCO, Aurangabad,
Tq. & Dist. Aurangabad.
2. Chandrakant s/o Baburao Dorje,
Age : Major, Occu. Labour,
R/o. Kapda Bazar, Jalna,
Tq. & Dist. Jalna.

....Respondents

....
Mr. Avishkar S. Shelke, Advocate for the applicant
Mr. R. S. Wani h/f Mr. A. S. Bajaj, Advocate for respondent no. 1
Respondent no. 2 served

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**CORAM : RAJESH S. PATIL, J.
DATE : OCTOBER 18, 2022**

ORAL JUDGMENT : -

1. This Civil Revision Application is filed by tenant / original defendant no. 1 challenging the concurrent findings of the trial Court and the appellate Court whereby the grounds of non-user and sub-letting were confirmed.

2. This CRA is filed on 20.09.2021 challenging the appellate court's judgment dated 04.02.2020 passed in Reg. Civil Appeal No. sgp

115/2015. The applicant / original defendant no. 1 (tenant) has stated in paragraph no. 9 of the Civil Revision Application that possession of the suit premises is already taken over by the respondent – landlord on 30.09.2013, which was pursuant to the possession warrants issued in the Execution Petition bearing RD No. 43/2012.

3. The advocate for respondent no.1 – landlord states that during the pendency of the appeal before the trial court, the landlord had disposed of the suit premises by a sale deed dated 11.12.2018. The said purchaser seems to have thereafter demolished the suit premises. The advocate for the applicant confirms the said fact and further states that a new premises has been constructed on the said piece of land.

4. The original landlord had filed suit for eviction on four grounds against defendant no. 1 – tenant and against defendant no. 2 as sub-tenant. The said suit was filed seeking possession of a commercial shop adm. 50 sq.ft. situated at CTS No. 3316, Municipal Plate No. 1-8-27, Kapda Bazar, Sadar Bazar, Jalna. The plaintiff examined himself and was cross-examined by the advocate for defendant no. 1. Thereafter, time was granted to the plaintiff to examine the second witness, however, the plaintiff was not able to lead evidence of the second witness. Hence, the plaintiff filed pursis Exh. 39 and closed evidence on 11.08.2011. Thereafter, the matter was posted for evidence of the defendants. Defendants were granted time on number of
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occasions to adduce evidence, however, they failed to adduce their evidence.

5. The trial Court had decreed the suit on four grounds by judgment and order dated 18.02.2012. Thereafter, execution application was filed by the landlord. Notices were issued in the said execution application to the present applicant / original defendant no. 1 (tenant). The original defendant no. 1 appeared in the execution proceedings. In the execution proceedings, ultimately the possession warrant was issued and on 30.09.2013, the execution warrant was executed and possession was handed over to the landlord. Much thereafter, after a delay of 710 days, appeal being Reg. Civil Appeal No.115/2015 was filed before the District Court only by defendant no. 1. Hence, by the time appeal was filed in District Court, the decree was already executed. The original defendant no. 2, who was sub-tenant, did not file any appeal challenging the trial court's decree. He has also not filed Civil Revision Application in this court. Therefore, the trial court's decree is confirmed as far as defendant no. 2 is concerned.

6. It is stated by the applicant (tenant) that till the month of October – 2009, they have paid rent and after filing of the suit they have not made any kind of application for depositing the rent in the court. It is landlord's case that the tenant had paid rent only upto the year 2004. It is the applicant's case that the shop was given by defendant no. 1 to be run by defendant no. 2.

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7. I have heard both the Counsels for the parties. I have gone through the pleadings and the impugned Judgments.

8. The Landlord has filed suit for eviction against Defendant no. 1, as tenant and against Defendant no. 2 as sub-tenant. Only Defendant no. 1 (tenant) has challenged the impugned Judgments. The Defendant no. 1 had contended in Written Statement that he is conducting business in suit shop jointly with Defendant no. 2. The Plaintiff landlord had specifically pleaded in the plaint that Defendant no. 1 had sub-let the premises to Defendant no. 2. The said fact is verbally repeated in evidence of P.W. No. 1. Even in cross-examination, he stated that Defendant no. 2 is the person in illegal possession. The Defendants have not stepped into witness box, to prove their case. Identical facts were in the case of **Flora Elias Nahoum and others Versus Idrish Ali Laskar** reported in (2018) 2 SCC 485; where it was held that once tenant admits the possession of alleged sub-tenant and the plaintiff has adduced the evidence about the same, the onus of proof was shifted on the tenant.

9. It is admitted fact that after Decree for eviction was passed by Trial Court, the possession of suit premises was handed over to Landlord in execution proceedings. Much later, the Appeal was filed by tenant in Appellate Court. The tenant also prayed for injunction in
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Appellate Court. However, the same was refused. The Appeal was heard and dismissed. Thereafter, the present Civil Revision Application is filed. During pendency of Appeal, the suit premises was demolished. Therefore, even though a new premises is constructed on the said land, the suit premises no more is in existence.

10. The Applicant's Counsel referred to judgment of **Smt. Nirmal Kanta (D) by L.Rs. v. Ashok Kumar and Anr.** reported in AIR 2008 SC 1768. The facts in Smt. Nirmal Kanta (supra) were quite different than that of case in hand. So also Smt. Nirmal Kanta (supra) is under East Punjab Rent Restriction Act, 1949, wherein the definition of tenant, is quite different than that of Maharashtra Rent Control Act. Therefore, the ratio laid down in Smt. Nirmal Kanta (supra) is not applicable to the present case.

11. Taking into consideration the above facts and that the present Civil Revision Application has been filed by the tenant after possession is lost and having not been stepped into the witness box to lead evidence, I conclude that there is no merit in the Civil Revision Application and same is accordingly dismissed.

[RAJESH S. PATIL]
JUDGE