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Corrected as per order dated 4/10/2022.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 36 OF 2021**

Skylark Constructions and Others. Applicants.

V/s

Shahu Sut Kapad Kamgar Sangh Respondent.

Mr. Chetan G. Patil for the Applicants.

Mr. Sandeep S. Koregave for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 25, 2022

P.C.:-

1] This Revision is by the tenants/defendants to Regular Civil Suit No. 1858 of 2012 initiated by the non-applicant/plaintiff for eviction on the ground of non-user and default in payment of rent.

2] The said suit came to be decreed vide judgment and decree dated 22/2/2018 which was questioned by the Applicant/defendant in Regular Civil Appeal No.108 of 2018 before the District Judge, Kolhapur, who vide impugned judgment and order dated 13/01/2020 dismissed the same. As such, this Revision.

3] Submissions of Mr. Patil, learned Counsel appearing on behalf of the Applicants are, Courts below have recorded erroneous decisions as they have failed to appreciate evidence which was brought on record. So as to substantiate his contentions, he has invited my

attention to the evidence of Plaintiff's witness viz. Vijaykumar Kokate. He is claimed to have given admission that Applicants were having extended office premises at Laxmi Apartment. Drawing support from the judgment of the Apex Court in the matter of *M.K. Palaniappa Chettiar and Anr. vs. A. Pennuswami Pillai*, reported in **(1970) 2 SCC 290**, he would urge that this Court should exercise revisional jurisdiction in the matter. In addition, he has drawn support from the judgment of the Bombay High Court in the matter of *C.R. Shaikh vs. Lilabai D. Rohida and another* reported in **1980 SCC Online Bombay 221**, so as to claim that the cause of action has to be based on non-user for six months immediately preceding filing of the suit and not the events prior to such period. As such, he would urge that from the evidence of D.W.1 and D.W.2 it was established that the suit premises were, in fact, in the actual use of the Applicants/tenants. As such, according to him, judgments impugned are liable to be set aside.

4] Mr. Koregave, learned Counsel for the non-applicant would support the judgments impugned and urge that in view of concurrent findings recorded by both the Courts below, this Court should be cautious in causing interference. While drawing support from the judgment of this Court in the matter of *Bhaskar Wamanrao Rithe and another vs Smt. Indira Iyer* reported in **2006(1) Mh.L.J. 155**, he would urge that landlord need not to establish that the premises were not in use at all. According to him, as long as landlord proves that tenant was not using the premises for the purpose for which it was let out for continuous period of six months, it is sufficient enough to decree the

suit. As such, he would urge that Revision which suffers from lack of issue of jurisdiction needs to be rejected.

5] I have appreciated said submissions.

6] The suit premises consists of Shop No.4 which was taken on rent by the Applicants at the rate of Rs 400/- per month. The suit for eviction is initiated by Trade Union through its General Secretary on the ground of non-payment of rent and non-user. Both the Courts below have concurrently held in favour of non-applicant on the issue of non-user, whereas arrears of rent issue was answered in favour of the Applicants-tenants/Defendants.

7] So as to appreciate contentions raised by Mr. Patil, learned Counsel for the Applicants, with his assistance, I have read the Written Statement-Exhibit-13, evidence of P.W. 1 Mr. Vijaykumar Kokate and evidence of D.W.1 and D.W.2. Upon perusal of the said evidence it is clear that Applicants/tenants have failed to demonstrate consumption of electricity (energy used) for a period from April 2011 to February, 2012. During aforesaid period, consumption of electricity vide aforesaid electricity bills Exhibit-25 is between 1 Unit to maximum 7 Units per month. As such, it is established from said Exhibit-25 that Applicants have not consumed electricity, which has also led to both the courts below to draw inference of non-user.

8] As against the claim put-forth by the Plaintiff about non-user,

D.W.1 in his evidence has admitted that they have secured alternative accommodation/premises which is at Laxmi Apartment, Shahupuri, Kolhapur. In the Written Statement-Exhibit-13, Applicants/tenants have mentioned that the construction business is operated from new premises by entertaining customers at the new premises, so also all the employees are working from the new premises i.e. Laxmi Apartment. Applicants have failed to mention the fact that they were also operating from the suit premises in their Written Statement or affidavit. Though Applicants have come out with a case of parallel use of both the premises, however once non-applicant has discharged its burden, Applicants have failed to prove that they were operating from both the premises.

9] Once both the Courts below based on appreciation of pleadings and evidence available on record have reached to the conclusion that Applicants have not used the premises for a period of six months immediately preceding date of initiation of the suit i.e. 04/05/2012, in my opinion, both the Courts below were justified in passing an order of eviction for non-user.

10] The lower Appellate Court has re-appreciated entire evidence and in categorical terms observed that vide Exhibit-85 Resolution dated 27/3/2012 non-applicant has authorized its Secretary to initiate the suit. Applicants have failed to demonstrate user of the premises from both the places i.e. the suit premises and the alternative premises which were at Laxmi Apartment. Rather, lower Appellate

Court is justified in recording finding that the Applicants have failed to discharge their burden by demonstrating through documentary and oral evidence that they are operating their business from both the places.

11] In this back drop, reliance placed by Mr. Patil, learned Counsel for the Applicants on the judgment of the Bombay High Court in the matter of *C.R. Shaikh*, cited supra will be of hardly any significance. Rather, from the evidence of D.W.1 and pleadings it is established that the Applicants were not using the suit premises. That being so, no error of jurisdiction or failure of jurisdiction can be noticed in the matter. Though my attention is invited to the statement made by witness of the non-applicant that the Applicants are operating from extended premises which is at Shahupuri that by itself will not mean that Applicants were using the suit premises at the same time. As such, support drawn from the judgment in the matter of *M.K. Palaniappa Chettiar*, cited supra will be hardly of any support to the Applicants.

12] That being so, no case for interference is made out. As such, Civil Revision Application fails and same stands dismissed.

13] **Ad-interim relief is ordered to be continued till 31/10/2022.**

(NITIN W. SAMBRE, J.)