

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 5106 OF 2021

Gopal s/o Manoharrao Wankhede

-- Petitioner

Vs.

Ketan s/o Sharad Mahajan

-- Respondent

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Trivedi, Adv. h/f Mr. S.G. Malode, Advocate for Petitioner
Mr. Rohit Borwankar, Advocate h/f Mr.S.S. Shahane, Advocate
for Respondent

CORAM : MANISH PITALE, J.

DATE : 21st MARCH 2022

By this Writ Petition, the petitioner has challenged concurrent orders passed by the two Courts below. The respondent had filed a suit for ejectment and possession under Section 16(1) (n) of the Maharashtra Rent Control Act, 1999. The ground for eviction was that the petitioner had not been using the suit premises for more than six months before the suit was filed by the respondent in the Small Causes Court.

2. The parties led evidence on the point in issue that arose in the present case. After appreciating the oral and

documentary evidence on record, the Small Causes Court by its judgment and order dated 05/01/2018, held that the respondent / landlord had established that the petitioner had not used the suit premises for a continuous period of six months. On the basis that the ground for eviction was made out, the suit was decreed and the petitioner was directed to hand over possession of the suit property within thirty days to the respondent.

3. Aggrieved by the same, the petitioner filed an appeal under Section 34 of the aforesaid Act before the District Court. By judgment and order dated 07/01/2020, the District Court dismissed the appeal, agreeing with the findings of facts rendered by the Small Causes Court. Accordingly, the decree of eviction was confirmed.

4. Mr. Trivedi, learned counsel holding for Mr. Malode, learned counsel for the petitioner sought to assail the concurrent findings given by the Courts below contending that the said findings were primarily based on the fact that the electric supply to the tenanted premises was disconnected in February 2013 and it came to be restored in June, 2015. According to the learned counsel for the petitioner, this could not have been a factor to conclusively prove the ground under Section 16(1)(n) of the aforesaid Act for eviction of the petitioner. On issuance of notice, the respondent entered appearance through counsel.

5. Shri Rohit Borwankar, the learned counsel appearing for the respondent opposed the contentions raised on behalf of the petitioner. It was brought to the notice of this Court that the two Courts below had appreciated the oral and documentary evidence on record exhaustively to come to the conclusion that the ground under Section 16(1)(n) of the aforesaid Act was fully satisfied and that, therefore, the writ petition deserved to be dismissed.

6. This Court has perused the orders passed by the Small Causes Court and the District Court. The material placed on record, including the evidence of the parties, is also perused. It is found that the two Courts below have concurrently rendered findings of facts against the petitioner, based on appreciation of oral and documentary evidence. It has been found on the basis of the material and evidence available on record that the petitioner was indeed not using the tenanted premises for a period of more than six months and that, therefore, the ground for eviction under Section 16(1)(n) of the aforesaid Act was clearly made out. A perusal of the judgment and order of the Appellate Court shows that the entire material on record was appreciated in the correct perspective and it was found that the suit premises was continuously not in use for a period of more than six months.

7. This Court does not find any good reason to differ with the concurrent findings rendered by the Small Causes Court and the District Court. No case is made out for interference in the concurrent findings rendered by the aforesaid Courts and that the decree of eviction does not deserve interference. A perusal of the material available on record also shows that the Courts below have not proceeded only on the basis that electric supply to the tenanted premises was indeed disconnected in February 2015 and restored in June, 2013. Other material on record has been taken into consideration while rendering findings against the petitioner. Therefore, there is no substance in the contentions raised on behalf of the petitioner. Accordingly, the writ petition is dismissed. The decree of eviction is confirmed and the petitioner is directed to hand over vacant and peaceful possession to the respondent, in terms of the decree passed by the Small Causes Court, within a period of thirty days from today.

JUDGE