

SGA

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

CIVIL REVISION APPLICATION NO. 12 OF 2021

Balajitsingh Mahendrasingh Alag
1-A) Baljitkaur Balajitsing Alag
(both deceased, through their legal heirs)
1-b) Gangadeepsingh Balajitsingh Alag
and others. ... Applicants

Versus

Dr. Anilkumar Bhimrao @ Babasaheb Nayak ... Respondent

...
Mr.S.A. Deshpande – Advocate for the Applicants
Mr. V.A. Bagdiya – Advocate for respondent
....

CORAM : GAURI GODSE, J.
DATE : 10th January, 2023

PER COURT :

1. This civil revision application is filed by original defendant-tenant for challenging the eviction decree passed by the appellate court on the ground of default and non-user.
2. The respondent-landlord has filed suit on the ground of default in payment of rent, non-user and bonafide requirement. The suit was initially decreed on the ground of bonafide requirement and non-user. The present applicants-tenants had preferred Regular Civil Appeal No.4 of 2013 for challenging the decree of eviction. The first appellate court has dismissed the appeal preferred by the

applicants. The first appellate court has confirmed the decree of eviction on the ground of non-user, however, has also reversed the findings of the learned trial court on the ground of default and respondent-landlord is held entitled also for decree of eviction on the ground of default.

3. Learned counsel appearing for the applicants state that once the trial court has already dismissed the suit on the ground of default by holding that the said ground was premature as suit was filed prior to expiry of 90 days from the date of service of demand as contemplated under section 15(3) of the Maharashtra Rent Control Act, 1999, in an appeal filed by the applicants, the first appellate court could not have granted decree on that ground. For this purpose, he relies upon the decision of this Court in the case of **Jitendra Vasantrao Nagarkar Vs. Mohanlal Maluramji Agrawal** reported in **2016(6) Bom.C.R. 743**.
4. In so far as the decree on the ground of non-user is concerned, he states that both the courts have wrongly relied upon only the electricity bill, which shows less consumption and disconnection of the electricity. He states that subsequently disconnection was reconnected and that the applicants were always occupying the suit premises. He states that the same probably can be as the

applicants are running a dhaba and applicants for most of the time remain on the dhaba and hence the less consumption can not be held against the applicants to hold that they are not using the suit premises. He further states that both the courts have heavily relied upon the endorsement on the bill that door is locked. He submits that the said endorsement can not be held to be against the applicants to mean that the applicants are not in use of the suit premises.

5. Learned counsel appearing for the respondent states that so far as the decree of eviction passed by first appellate court on the ground of default is concerned, that is not required to be gone into at this stage as the decree on the ground of non-user is also passed and decree can be confirmed only on the ground of non-user as the same is well considered decision by appreciating the facts by both the courts. Learned counsel appearing for the respondent-landlord states that original defendant no.1-Balajitsingh was the tenant with respect to the suit premises. During pendency of the suit, he expired and his heirs and legal representatives were brought on record. He states that the original defendant no.1 never stepped into witness box and only evidence recorded was that of defendant no.2, who is brother of the original tenant i.e

defendant no.1. He, therefore, states that there is no merit in the present civil revision application and same may be dismissed.

6. I have perused the pleadings of the parties as well as the judgments of both the courts. So far as the decree for eviction passed by the first appellate court on the ground of default is concerned, the same is not required to be gone into as there is also decree passed on the ground of non-user.
7. With respect to contention of the applicant on the ground of non-user is concerned, both the courts have recorded finding that the tenant failed to prove that suit premises were being occupied by the tenant. The trial court has examined the evidence on record as well as the documents produced in support of the ground of non-user. The trial court has recorded a finding that the electricity bills, which were produced on record in respect to the suit premises showed that the premises were locked since September, 2007. The electricity connection was also disconnected for non-payment of charges. Even the electricity bill, showed that there was no consumption of the electricity, hence the trial court relied upon the electricity bills to hold that the tenant was not occupying the suit premises. The trial court has also referred to the proceedings of the judgment in Regular Civil Suit No.203 of

2004, which was produced on record. It is held that in the said suit, the address of the defendant-tenant was shown to have been residing on different address and the defendant-tenant was seen residing at the address mentioned on the notice and not on the address of suit premises. Trial court has also held against the tenant on the ground that the original tenant-defendant no.1 failed to step into witness box for rebutting the evidence, which was produced by the landlord. Defendant no.2, who was brother of defendant no.1, was examined, however, the trial court has rightly held that his evidence is not reliable as he had no personal knowledge with respect to the occupation of the suit premises, which was to be proved by defendant no.1-tenant. With such observations, trial court passed a decree on the ground of non-user.

8. The first appellate court has also appreciated the entire evidence and documents on record. The first appellate court has accepted the findings recorded by the trial court on the ground of non-user and has minutely also recorded it's findings on the documents on record. Considering the findings recorded by both the Courts, I do not find that any interference is called for in the present civil revision application. There is nothing produced on record to show

that the suit premises were actually used by the tenant and that he was in occupation of the same. I do not see any merit in the submission made by learned counsel appearing for the applicants that both the courts have erred in relying upon the endorsement on the electricity bill, which showed that the door was locked. Both the courts have considered that the endorsement on the electricity bill, disconnection of electricity for non-payment of charges as well as non-consumption of electricity, which showed that the suit premises were not being used by the tenant. Both the courts have also relied upon the evidence produced by the plaintiffs, which reveals that the suit premises were not being used by the tenant. There were photographs of the suit premises produced on record as well as the postal envelopes sent to the tenant and acknowledgment receipt produced in separate suit, which did not show the address of the tenant of the suit premises. Thus, by carefully examining the oral evidence as well as documentary evidence, there is finding recorded by both the courts that the applicants-tenants were not residing in the suit premises and suit premises were kept locked. In such circumstances, the decree for eviction on the ground of non-user is correctly passed by the trial court and confirmed by the first

appellate court. I do not see any infirmity in the judgments of both the courts, which can call for any interference in the revisional jurisdiction of this court.

9. Hence, for the reasons stated hereinabove, the civil revision application is dismissed.

[GAURI GODSE]
JUDGE