

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

CIVIL REVISION APPLICATION NO.179 OF 2010

Mahindrasing Wariyamsingh Saluja
Age 50 years, Occu. : Retail Cement Business,
at Shop No.11, Dhannasing Building,
Aurangpura, Aurangabad
R/o. Plot No.51, Sindhi Colony,
Aurangabad.

.. PETITIONER
[Orig. Plaintiff]

VERSUS

Tarachand Rupchand Bhatti
Age 49 years, Occ. Business,
R/o. Dhanmandi, Aurangabad.

.. RESPONDENT
[Orig. Defendant]

...

Mr.Ranbir L. Chabad, Advocate for the applicant.
Mr.R.G.Joshi, Advocate for the respondent

...

CORAM : ARUN R. PEDNEKER, J.

Reserved on : 21.06.2023
Pronounced on : 12.09.2023

JUDGMENT :

1] By the present Civil Revision Application under Section 115 of Code of Civil Procedure, the applicant is challenging the judgment and order dated 15.07.2010 passed by the Appellate Court i.e. District Judge-3,

Aurangabad, thereby reversing the judgment and order of the trial Court granting decree of eviction under Section 16 (1) of the Maharashtra Rent Control Act [for short 'Rent Act'] and dismissing the suit of eviction.

Brief facts leading to filing the present Civil Revision Application can be summarized as under :

2] The applicant is the owner / landlord of Shop No.5 on ground floor constructed on CTS no.4585 from Municipal House No.3-7-17 in Dhannasing Building, adjacent to Aurangpura Bhajimandi, Aurangpura, Aurangabad. The respondent is the lessee of the shop No.5 on rent of Rs.350/- per month from the year 1981. The tenancy starts from 16th day of English Calendar month. The respondent was running Hotel business in the shop no.5. From 1998, the respondent started paying rent of Rs.500/- per month to the petitioner. The respondent paid rent upto 15.08.2000 and thereupon stopped paying rent to the petitioner as he closed his business of Hotel in the suit shop. The respondent was in arrears of rent from 16.08.2000 to 15.10.2006 i.e. 74 months. Despite request and demand,

the respondent did not pay the rent nor did vacate the premises though the respondent was not running his hotel business nor was using the suit shop since 2000.

3] It is further the case of the applicant that the respondent stopped his business of Hotel and has locked the shop and has ceased to occupy the shop since November – December, 2000 and since the respondent has not used the suit shop for continuous period from November–December 2000 without reasonable cause till the filing of the eviction proceedings, the respondent be evicted from the suit property.

4] The respondent contested the claim of the applicant by filing written statement and denied that he has closed his business since November-December, 2000 and claimed that the respondent is running his business in the said shop and therefore the applicant is not entitled to claim possession of the suit shop from the respondent. After the death of the applicant's elder brother, a dispute arose between the applicant and his nephew, due to which the

applicant was not in a position to pass-over the receipts, though the respondent was paying rent regularly to the applicant. The respondent contended that he met with an accident in which his backbone and vertebra was damaged due to which the respondent was advised bed rest by the Doctor for a period of 6 months. Immediately after the accident, the business was closed by the respondent only for short period.

5] The trial Court on consideration of the material on record formulated the following issues along with findings thereon :

	मुद्दे	निष्कर्ष
1.	प्रतिवादीकडे 74 महिन्याचे भाडे थकले होते असे वादीने सिध्द केले आहे का.	नाही
2.	वादी 16 नोव्हेंबर 2003 ते 15 ऑक्टोबर, 2006 या 36 महिन्याच्या वालावधीचे भाडे रु. 18000/- वसुल करण्यास हक्कदार आहे काय.	होय
3.	सदरील रकमेवर वादी द.सा.द.शे. 15 टक्के व्याज आकारण्यास हक्कदार आहे काय.	होय

4.	सन 2000 च्या नॉव्हेंबर-डिसेंबर पासुन प्रतिवादी दावा जागेचा उपयोग करीत नाही असे वादीने सिध्द केले आहे काय.	होय
5.	वादी भाड्याबाबतच्या पावत्या छेत नव्हता असे प्रतिवादीने सिध्द केले आहे काय.	होय
6.	भाडे नियंत्रण कायद्याचे क. 33 मधील तरतुदीनुसार सदरचा दावा चालु शकत नाही, असे प्रतिवादीने सिध्द केले आहे काय.	नाही
7.	अंतिम आदेश व हुकूमनामा	खालीलप्रमाणे

6] The trial Court on consideration of the material directed the respondent to vacate the suit shop on the ground of non-user of the suit shop without reasonable cause. The trial Court also directed that the applicant – plaintiff is entitled to recover the amount of Rs.18,000/- from the respondent – defendant along with interest @ 15% p.a. However, the eviction was only granted on the ground of non user of the premises from 16th November, 2003 to 15.10.2006. The appeal was filed by the respondent – defendant against the order of the trial Court. The Appellate Court formulated the following points for determination and has rendered it's finding:-

	POINTS	FINDINGS
1.	Whether the Court of Civil Judge (Junior Division) has jurisdiction over the subject matter in the suit?	In the affirmative.
2.	Whether the plaintiff has proved that, the defendant is in arrears of rent from 16.11.2003 to 15.10.2006 ?	In the affirmative.
3.	Whether the plaintiff has proved that, the suit premises has not been used without reasonable cause for the purpose for which it was let for a continuous period of six months immediately preceding the date of suit?	In the negative
4.	Whether the plaintiff is entitled for a decree as sought?	As per final order.
5.	What order?	As per final order

7] The appellate Court reversed the judgment of the trial Court on the aspect of grant of eviction on the ground of none user of the premises from 16th November, 2003 to 15.10.2006 and maintained the decree of the trial Court as regards payment of rent. The Appellate Court on this aspect held that the plaintiff has not been able to

establish that the premises is not continuously in use for 6 months immediate before the notice of eviction date. It is the case of the applicant – plaintiff that non user of premises since 2000 itself is damaged by the plaintiff by bringing on record that the defendant was selling sweet-meats till the year 2004. In such circumstances, when the plaintiff himself is not sure and is vague as to time from when the shop is closed it is hazardous to accept the evidence led by him more so when there is equally strong evidence by the defendant that the suit shop is running. As regards non user of the premises during the period when the defendant was incapacitated due to his accident needs to be ignored, because, it is a sufficient cause in itself.

8] The applicant – plaintiff contended that there is no electricity supply to the suit premises for a long period of time and there is evidence that the respondent was not running a business and without electricity, it is not possible to run the shop. As such, adverse inference ought to have drawn that in absence of electricity for a long period of time

that the respondent is running a hotel. There was also evidence on record that the applicant also runs business in the premises where the suit shop is located and he is aware for last 7 years before filing of the suit that suit shop is closed. The respondent has closed down the shop and he did not hold license under the Shop Act and as such there was no business running on the suit premises. There is no further positive evidence led by the defendant that he is running a suit shop and as such inference of the appellate Court that the plaintiff is not able to establish that the suit shop is closed, is perverse.

9] The learned counsel for the applicant – plaintiff has relied upon the judgment of this Court in the case of **Ravinbhushan Anant Datar & another Vs. Waman Dattatraya Purohit** reported in **2004 (1) Mh.L.J. 100** at para no. 8 held as under :

8. That being so, the learned Trial Judge was clearly justified in coming to the conclusion that there was a complete failure on the part of the respondent to produce any material which would even prima facie indicate that the premises had been used for the

purpose for which they were let. The absence of electricity, the absence of a telephone which was, in fact, removed after 12 years in 1977, the absence of a business licence and the failure of the respondent to produce Account Books and a wage register would only go to establish that a ground for eviction has been clearly established with reference to section 13 (1) (k). An adverse inference would have to be drawn against the respondent for a complete failure to produce any evidence whatsoever to show the user of the premises for the purposes for which they were let. I am conscious of the limitations on the exercise of the jurisdiction under Article 227 of the Constitution. This Court would not in that jurisdiction reappreciate the evidence, substitute its own conclusions for those of the Court below or adopt a particular view only because it commends itself better than that of the primary fact finding Court. However, this is a case where the First Appellate Court has failed to consider and has completely ignored material evidence on the record, including clear admissions of the respondent. Hence, the interference of the Court is warranted in order to ensure that a failure of justice does not ensue.

10] The learned counsel has also relied upon the judgment in the case of **Vinod Kumar Arora Vs. Smt.Surjit Kaur** reported in **AIR 1987 SC 2179** to contend that the High Court under Section 115 of the Civil Procedure Code is

fully entitled to reverse the findings of the Rent Controller and Appellate Authority. If the findings are based on the conjectures and surmises and if the findings are by ignoring piece of evidence which is not controverted.

11] *Per contra*, the learned counsel for the respondent submits that this Court has limited power in the Civil Revision Application and under Section 115 of the Civil Procedure Code this Court has to examine the legality and propriety of the order under revision and the propriety or the legality of the finding made by the authorities.

12] The learned counsel for the respondent relied upon the judgment in the case of **Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh** in Civil Appeal No.6177 of 2004, decided on August 27 2014 to contend that the revisional jurisdiction under section 115 of the Civil Procedure Code is narrow in comparison to the revisional jurisdiction available to the High Court under the various Rent Control Acts.

13] Having considered the rival submissions, it is necessary to look into the pleadings of the parties. The plaintiff in his plaint has contended at para no.5 is as under:

5. That, the defendant was running Hotel in suit premises. In November/December, 2000 he has closed his business and since then he has locked the shop and thereby ceased to occupy the suit shop as such the plaintiff is entitled to claim possession as he had not used suit shop for which it was let for continuous period from November/December, 2000 without reasonable cause.

14] In response to the aforesaid para no.5, the defendant submitted in his written statement at para no.5 is as under :

०३) असे कि, वाद दाखल करणे मला कोणत्याही प्रकारची नोटीस मिळालेली नाही. तसेच वादामध्ये दर्शवलेल्या वाद मिळकतीच्या चतुःसीमा देखील चुकलेल्या आहेत. वादिचे कथन ७४ महिन्याचे भाडे बाकी असून ते सर्वस्वी चुक असून त्यांनी मागितलेले रुपये 18,०००/- थकीत आहे हे देखील चुकीचे आहे. माझ्या दुकानाचे लाइट हे वादिचे वडील बंधू हयात असताना कट झालेले आहे. परिणामी विद्युत पुरवठा हा माझे दुकान चालू आहे आणि तो दुकान बंद आहे म्हणून विद्युत पुरवठा बंद आहे ह्या वादिच्या कथना नुसार चुकिचे आहे. माझे दुकान हे आजही चालू असून माझ्या दुकानात कोणत्याही प्रकारे अडथळा नाही. विद्युत पुरवठा कट झाल्यानंतर घर मालक हे रु १००/- प्र.मा. घेऊन लाइट देत होते.

15] In his cross examination, the defendant stated that the electricity connection was removed before 10 to 12 years as he has not paid the electricity bills and that no electricity meter was installed thereafter. In his cross examination, the defendant stated that till 2004 he was selling sweet-meats from the suit shop. Based on the above evidence, the Appellate Court has held that the appellant was not able to establish that the respondent was not running shop in the suit premises from the year 2000 onwards. It is brought on record through the cross examination of the defendant that he was selling sweet meats on the shop in the year 2004 and plaintiff is not sure from which date the shop is not running and the same is closed by the defendant.

16] As regards electricity connection, although it is stated that the tenant needs electricity connection and in the affidavit he has stated that electricity was not provided. The defendant has submitted that his business is still

running. He has not locked the shop and do not ceases to occupy the suit property. Thus the plaintiff has no right to ask for the possession by evicting the defendant. The Appellate Court has rendered finding that the premises is still used by the defendant.

17] This Court power to interfere under Section 115 of Civil Procedure Code is very limited and it can be only exercised when the subordinate Court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the Appellate Court has rendered finding that there is no evidence to show that the respondent – tenant is not utilizing the suit shop for 6 months prior to the issuance of the notice of eviction. This finding is based on the fact that the plaintiff – landlord has made contradictory statement as regards the date of closure of the shop so also there is positive evidence from the tenant that he has been utilizing the shop although there

was no electricity connection and that this finding cannot be said to be perverse in the facts of the case. As such, it cannot be held that the appellate court has exercised its jurisdiction erroneously and with material irregularity.

18] The Appellate Court having rendered finding of facts on the material placed on record such finding cannot be interfered unless there is procedural error in rendering the findings or that the material aspect of the evidence is ignored. The Appellate Court has considered the evidence on record and rendered the finding. The respondent – plaintiff is not able to establish that the shop is closed and for the period it was alleged to be closed.

19] In view of the findings of fact as above rendered by the Appellate Court, the same cannot be questioned in revisional jurisdiction unless it is without considering the material evidence on record or with material irregularity. I do not see any reason to interfere with the findings recorded by the Appellate Court. Hence, the present Civil Revision Application is dismissed.

20] In view of dismissal of the Civil Revision Application, pending Civil Application does not survive and the same stands disposed of.

[ARUN R. PEDNEKER]
JUDGE

. After dismissal of the Civil Revision Application, the learned counsel appearing for the applicant submits that there is a suit pending between the parties on a different ground and that the finding recorded herein may not influence the civil suit. It is hereby directed that the effect of this order would be taken into consideration by the Civil Court only in accordance with law.

[ARUN R. PEDNEKER]
JUDGE

DDC