

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO.9554 OF 2018**

Nanik Nagrani

.... Petitioner

***Versus***

Smt.Narmadabai Tukaram Shinde

(Since deceased through her LRs)

A Mohan Tukaram Shinde and Ors.

.... Respondents

.....

Mr.G.S. Godbole, Senior Advocate i/b. Mr.Atharva A. Dandekar,  
Advocate for the Petitioner.

.....

**CORAM : ABHAY AHUJA, J.**

**DATED : 20<sup>th</sup> JULY 2023**

**P.C. :**

On 13<sup>th</sup> July, 2023, the following order was passed.

*“1. Mr.Dandekar, learned Counsel for the Petitioner, seeks some time to take instructions on whether the Petition has become infructuous or not. At his request, list on 20<sup>th</sup> July 2023.”*

2 Today when the matter was called out, Mr.Girish Godbole, learned senior counsel would submit that the Petitioner is the original defendant in Suit No.267 of 2012 (the “suit”/the “said suit”, for short), filed by the Respondents, namely, the original Plaintiffs against the Petitioner in the Small Causes Court at Pune, for eviction and recovery of possession of the premises bearing Block No.2, ground floor admeasuring 660 square feet situated at 11 Wilson Garden, Pune (the “said premises”, for short), on the ground of non

payment of rent under Section 15 and bonafide requirement and none user under Section 16 of the Maharashtra Rent Control Act, 1999.

3            Learned senior counsel would submit that by judgment and decree dated 2<sup>nd</sup> March, 2013, the Small Causes Court, Pune, decreed the suit and ordered recovery of possession. Aggrieved by the same, Petitioner preferred Civil Appeal No.638 of 2014, before the District Judge-9, Pune, on the ground that the suit summons were not properly served on the Petitioner.

4            It is the case of the Petitioner that only after the judgment and decree passed in the suit came to be executed and the Respondents recovered possession of the said suit premises, that the Petitioner came to know that the suit had been filed against him.

5            The Appellate Court observed that the Petitioner had been duly served with the suit summons, however, he had failed to appear in the suit, and, therefore, the suit was heard and decided exparte against him. The Petitioner has not adduced any contrary evidence to demonstrate otherwise and therefore the submission that suit summons were not properly served cannot be countenanced.

6           The Appellate Court after going through the pleadings and the evidence adduced before the trial Court confirmed the judgment and decree passed by the trial Court on all the counts viz. that the Plaintiff had proved that the Defendant i.e. the Petitioner was a willful defaulter in respect of payment of rent, that the suit premises had not been used by the Petitioner without reasonable cause for the purpose for which it was let out for a continuous period of six months immediately preceding the date of the suit, and, the suit premises was reasonably and bonafide required by the Plaintiff for her own use and occupation, and, that the Plaintiff also proved that she would suffer more hardship than the Defendant, if the decree of eviction was not passed.

7           I have perused the impugned judgment dated 14<sup>th</sup> February, 2018. It is clear from the proceedings that the Petitioner was in arrears of rent and even after receipt of notice and the suit summons, he failed to comply with the demand of rent made by the Plaintiff-landlord. Therefore, the Petitioner was a willful defaulter in respect of payment of rent. As far as the argument that the notice was not received by the Petitioner, I am in agreement with the findings of

the Appellate Court that as per the provisions of Section 27 of General Clauses Act, 1897, that there is a presumption that if postal communication is made on the correct address then it is to be presumed that the said communication has been received by the addressee and that “not claimed” endorsement would be good service.

8           With respect to the ground for non user for continuous period of six months prior to the date of the suit, the material perused by me, and, particularly the reference to the Bailiff’s report in the suit regarding service of suit summons clearly suggests that when the Bailiff had gone to serve the suit summons, the suit premises was locked and the Bailiff had to affix the copy of the summons on the suit premises. I am, therefore, in agreement with the finding of the trial Court as well as the Appellate Court that the Defendant i.e. the Petitioner had not adduced any evidence that after issuance of notice he was residing in the suit premises when the suit came to be filed on 4<sup>th</sup> July, 2012. Therefore, there is no evidence on record to show that six months preceding the date of suit the Defendant i.e. the Petitioner was using the suit premises. On the contrary, the suit premises was kept locked and not used by the Petitioner.

9           As far as the ground of bonafide requirement of the suit premises is concerned, the Plaintiff's statement that his mother i.e. the Plaintiff was an old age person and in need of accommodating her entire family in her house and was in need of the suit premises has also gone unchallenged. No contrary evidence has been adduced by the Petitioner to demonstrate that the requirement by the Plaintiff is not bonafide. I am, therefore, in agreement with the findings of the trial Court as well as the Appellate Court that the suit premises is reasonably and bonafide required by the Plaintiff for her own use and occupation, and, if decree of eviction is not passed in favour of the Plaintiff there is possibility of causing hardship to the Plaintiff than the Petitioner.

10           The Appellate Court has correctly exercised its jurisdiction in dismissing the Appeal of the Petitioner and confirming the decree of the trial Court.

11           I, therefore, do not find any jurisdictional error or any illegality or perversity in the findings of the Appellate Court having confirmed the judgment and decree of the trial Court. The Petitioner has already vacated the premises/has been dispossessed of the suit

premises. No interference is, therefore, called for in the judgment and order of the Appellate Court dated 14<sup>th</sup> February, 2018. The Writ Petition deserves to be dismissed and is hereby dismissed. No costs.

**(ABHAY AHUJA, J.)**