



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.593 OF 2022

Moses Benjamin Jhirad

... Applicant.

Versus

Kusum Damodar Paithankar (Late Mrs.)
(since deleted, through LRs. 1.Dr.Uttara
Mangesh Shukla and Ors.

... Respondents.

Mr. Maneesh Trivedi a/w. Mr.Vijay Ghedia i/by L R & Associates,
Advocate for the Applicant.
Ms. Vasanti Dighe, Advocate for the Respondents.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : DECEMBER 20, 2023.

P. C.:

1. Heard.
2. The Revision Application challenges the concurrent findings of the Trial Court and the Appellate Court decreeing the suit for eviction on the ground of non-user of the premises under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (for short, "MRC Act").
3. The facts of the case are that the R.A.E. Suit No.313 of 2010 was filed against the present applicant and his brother on the ground that the present applicant was residing in a premises at Thane since

last 30 years and his brother has shifted to Israel and that there was non-user continuously for more than last six months prior to the institution of suit without any reasonable cause. It was pleaded by the present applicant that as the purchased premises were situated at Thane near his workplace and he had shifted there, he was intermittently visiting the suit premises. It was also pleaded that the brother of the present applicant is likely to return from Israel.

4. The trial Court decreed the suit on the ground of non-user of the premises and negated the bonafide requirement of the landlord, as against which the Appeal preferred before the Appellate Bench also came to be rejected. The trial Court considered the issue of non-user of the suit premises and pleading that the applicant has shifted to Thane as also the admission that he had purchased the flat and was residing there with his family. As regards the applicant's brother who are arraigned as defendant no.1 in the suit, the applicant has deposed that the brother has shifted to Israel since June, 2022 and since then, he had never returned to Mumbai.

5. The Appellate Court considered the electricity bills during the relevant period of six months preceding the suit i.e. from 24th September, 2009 to 24th February, 2010 showing the consumption of

the electricity bill at Rs.39, Rs.41.57, Rs.39.69, Rs.42.41, Rs.37.76, Rs.102.87 and so on. Upon perusal of the electricity bills the Appellate Court noticed that the further period from September, 2009 to February, 2010, shows less consumption or no consumption of electricity in the suit premises. On the basis of the oral and the documentary evidence the Appellate Court held that the material facts were sufficient to discharge the burden of the respondent-landlord to establish ground of non-user and as such, the onus shifted on the appellant.

6. The Appellate Court considered that the intermittent visit to the tenanted premises does not amount to residence and it has to be continuous and that the tenant should show his intention to return to the suit premises in order to avoid the eviction decree. As regards the reasonable cause which was sought to be put forth by the applicant was that his son was a cancer patient and undergoing medical treatment in Tata Memorial Hospital from September, 2009 and as such, the applicant and other family members were required to remain present in the Hospital with his son.

7. Pertinently, the suit premises is situated at Dadar and the Tata Memorial Hospital is at Parel. If this is a cause which was sought

to be put forward than for the purpose of treatment of the son, it was the suit premises which were required to be occupied which are closer to the hospital and not the premises at Thane which is far away from the cancer hospital. Even if this cause is accepted, the same cannot be said to be a reasonable cause as the hospital is in close proximity of the suit premises and not Thane residence. The evidence on record establishes beyond doubt the non-user of the premises for a reasonable cause within a period of six months prior to the institution of the suit. The cause which was sought to be shown cannot be accepted for the reason as indicated above.

8. In exercise of the revisional jurisdiction under Section 115 of the Code of Civil Procedure, 1908, the Applicant has not been able to show any jurisdictional error in the concurrent findings of the trial Court and the Appellate Court. In light of the above, the Revision Application fails and is dismissed.

(Sharmila U. Deshmukh, J.)

9. At this stage a request is made by learned counsel for the Applicant seeking time of six months to vacate the suit premises. Time of six months is granted from the date of uploading of this

order on the official website of this Court, subject to the usual undertaking to be filed by the Applicant that he shall handover the vacant and peaceful possession of the suit premises to the respondents within a period of six months. The undertaking to state that during this period, he will not create any third party rights in the suit premises and that the period of six months has been sought for the purpose of handing over the vacant and peaceful possession and not for challenging the order before the higher forum. The undertaking to that effect to be filed on or before **5th January, 2024**.

(Sharmila U. Deshmukh, J.)