

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

Writ Petition (WP) No. 7749 of 2018

Mohammad Ibrahim S/o Late Mehboob Khan

Versus

Syed Faruque Ali S/o Late Syed Ahmed Ali

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.R.Khan, Advocate for the petitioner.

Shri Shahid M. Syed, Advocate for the respondent.

**CORAM : ANIL S. KILOR, J.
DATED : 2nd AUGUST, 2023.**

This matter pertains to landlord tenant dispute wherein the landlord failed in both the Courts below in seeking decree of eviction against the respondent on the ground that for more than six months the tenant kept the suit shop closed and further that, the suit shop is in a dilapidated condition.

2. The petitioner is an owner of the suit shop whereas the respondent is the tenant. There are five shops out of which four shops are in possession of the defendant. The petitioner filed the suit for eviction as one of the joint owners and also power of attorney holders of brothers and sisters.

3. It is stated that, the father of the defendant was tenant of the suit shop and he expired on 4th September, 2000 and who was running bakery in the suit shop. After his death the defendant continued the said business for about one year and thereafter he closed down the business and since then the shop remains in locked condition.

4. It is further alleged that the defendant has illegally and without the permission of the plaintiff had given the suit shop to third person in the month of Ramzan and for two months in summer for carrying out the business of juice and cold drink. Thus, there is an allegation of sub-letting of the suit shop.

5. It is further case of the petitioner that the structure of the suit shop is more than 100 years old and as such it is in dilapidated condition. It is stated that the brother of the plaintiff Abdul Rahankhan and son of Wasim Khan want to start the business of hotel by dismantling the existing structure and by constructing the new shop thereon.

6. Accordingly, the decree of eviction was sought by the petitioner, which both the Courts denied on the ground that the petitioner failed to establish any of the above referred grounds for eviction by leading cogent and sufficient evidence.

7. To test the merits in the argument made by the learned counsel for the petitioner that, the findings recorded by both the Courts below are perverse and without evidence, I have perused the oral evidence led by the petitioner.

8. In the cross-examination, the petitioner has categorically admitted that he has not given any notice after he found that the shop was closed down by the respondent and he is not doing any business in the said shop.

9. He has further admitted that he has also not given any notice on finding that, the respondent sub-let the premises to third person during the period of Ramzan and during the summer period.

10. He further admits that no evidence has been produced showing that the suit shop is 100 years old and it is in a dilapidated condition.

11. The P.W.3 who is adjoining shop owner deposed in favour of the petitioner, however in cross-examination he has admitted that the Court proceeding and disputes are going on in between him and the respondent, therefore, the Courts below have not found the evidence trustworthy.

12 Both the Courts below have analysed the oral as well as documentary evidence in detailed and

recorded the concurrent findings holding that the petitioner failed to prove that the suit shop has not been used by the defendant without reasonable cause for the purpose for which was it let for continuous period of six months preceding from the date of filing of the suit.

13 It has further held that the plaintiff failed to prove that the defendant unlawfully sub-let the said suit shop during the month of Ramzan and during summer and further failed to prove that the suit shop is in a dilapidated condition.

14. In absence of any perversity committed by the learned Courts below as argued by the learned counsel for the petitioner, I do not find any reason to interfere with the orders passed by both the Courts below. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]

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