



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

CIVIL REVISION APPLICATION NO. 44 OF 2018

Jayaram S/o Damomal Chandnani,
Age : 50 Years, Occ. Business,
R/o. Chandanani Dress, GG Road,
Gurudwara Chourasta, Nanded.

.. Petitioner
(Orig. Defendant)

VERSUS

Ramrao s/o Sadashiv Kharat
Age : 42 Years, Occ. Business,
R/o. Mahavir Society, Nanded

.. Respondent
(Orig. Plaintiff)

....

Advocate for the Petitioner : Smt. Charuta S. Deshmukh
Advocate for Respondent : Smt. Ranjana D. Reddy

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CORAM : SANDIPKUMAR C. MORE, J.

Reserved for order on : 31.01 2024

Pronounced on : 26.03.2024

ORDER:-

1. The petitioner, who is original defendant/landlord, has preferred this application for challenging the judgment and decree dated 08.11.2017, passed by the learned First Appellate Court i.e. District Judge-4, Nanded, in Regular Civil Appeal No. 4/2011. By way of the aforesaid impugned judgment and decree, the learned First Appellate Court has confirmed the judgment and decree passed by the learned trial Court i.e. Joint Civil Judge, Junior Division, Nanded, dated 04.12.2010.

2. The facts giving rise to the present application are as under :-

The present respondent i.e. original plaintiff/tenant had taken shop admeasuring 10 x 15 square feet bearing Nanded-Waghala Municipal Corporation No.3-6-474 situated at Hotel Parmeshwari Complex, G.G. Road, Nanded on monthly rent of Rs. 575/-. Thereafter, the present petitioner/defendant obstructed possession of the respondent/plaintiff. He filed suit bearing Regular Civil Suit No. 568 of 2002 for perpetual injunction against the petitioner/defendant. The petitioner-defendant in the said suit filed counter-claim for seeking eviction of the respondent/plaintiff from the suit shop on the ground of default in payment of rent and non-user of the suit shop. The learned trial Court allowed the suit of the respondent/plaintiff and restrained the present petitioner/defendant from causing interference in the peaceful possession of the respondent/plaintiff over the suit shop.

3. The learned trial Court while allowing the suit, also dismissed the counter-claim filed by the present

petitioner/defendant. Thereafter, the petitioner was constrained to file Regular Civil Appeal No. 4 of 2011 before the learned First Appellate Court in respect of dismissal of his counter-claim, but the said appeal has also been dismissed. Hence, this revision application.

4. The learned counsel for the petitioner submits that the First Appellate Court as well as the learned Trial Court did not appreciate the evidence on record in proper perspective. The learned First Appellate Court instead of discussing the evidence of non-user of the suit premises, unnecessarily discussed in its judgment, the aspect of alternate accommodation which was not at all raised by the petitioner/defendant as a ground for eviction.

5. On the contrary, the learned counsel for the respondent/plaintiff supported the judgments passed by both the Courts below and pointed out that though the learned First Appellate Court did not frame point in respect of non-user of the suit shop, but in the judgment it has considered the evidence on that aspect. As such, he prayed for dismissal of the application.

6. Heard rival submissions and also perused the documents on record along with both the impugned judgments.

7. It is not in dispute that the suit shop was rented by the present petitioner to the respondent/plaintiff. Further, both the Courts below have given concurrent findings as to how the petitioner tried to obstruct the peaceful possession of the respondent/plaintiff over the suit shop. Moreover, both the Courts below have concurrently held that the petitioner could not establish both grounds of eviction, namely, default in payment of rent as well as non-user of the suit shop by the respondent/plaintiff.

8. So far as the default in payment of rent is concerned, the evidence on record shows that though the petitioner/landlord had claimed that rent of the suit property was fixed at Rs. 1200/- per month, but he could not adduce any reliable evidence to that effect. On the contrary, the respondent and his witnesses have produced on record oral evidence to show that the rent of suit shop was just Rs.575/- per month. Further, there is ample documentary evidence on record which shows that the

respondent/plaintiff paid the said rent to the petitioner/landlord regularly and when the landlord refused to accept the same, he also tried to send the same through money orders, which were refused by the petitioner/landlord. Further, it is also not in dispute that thereafter the respondent/plaintiff started depositing rent in the Court during the trial. Therefore, all these facts are sufficient to hold that the petitioner/landlord failed to prove the alleged issue of default in payment of rent. Both the Courts below have rightly considered this aspect in the light of the evidence.

9. The learned counsel for the petitioner/landlord has specifically claimed that though the petitioner/landlord has raised contention that the respondent/plaintiff stopped using the suit shop, and therefore, he is liable to be evicted on the ground of non-user, but on this aspect, if the evidence adduced before the learned trial Court is perused, then it appears that the petitioner/landlord, in support of his contention only submitted photographs of the suit shop mentioning that it was locked. However, merely producing such photographs showing the premises

in locked condition will not suffice the purpose.

10. On the contrary, the learned trial Court has also relied upon the evidence of the witnesses of the plaintiff who have deposed that the respondent/plaintiff runs business from the suit shop itself. Further, the alternate accommodation acquired by the respondent/plaintiff appears to be acquired for storing the business material and the petitioner/landlord has not adduced any reliable and trustworthy evidence to show that the respondent/plaintiff had, in fact, started using the said alternate premises for his business by keeping the suit shop closed. Though, it is contended by the learned counsel for the petitioner/landlord that the learned First Appellate Court did not frame point on the non-user of the suit shop, but on perusal of the judgment of learned appellate Court, it is evident that it has already considered the evidence of non-user of the suit shop. The learned First Appellate Court has discussed the evidence of witnesses of the respondent/plaintiff and observed that from their evidence it was revealed that the respondent/plaintiff was possessing the suit shop and

was running business therefrom. Further, the learned First Appellate Court, after discussing the evidence on record, has clearly opined that the petitioner/defendant failed to establish the fact that the respondent/plaintiff was defaulter and the non-user of the suit shop.

11. Thus, considering all these facts and especially the concurrent findings of both the Courts below, it has been revealed that though the learned First Appellate Court did not frame specific point on the aspect of non-user of the suit shop, but has already discussed the evidence on record to that effect. As such, it cannot be said that the judgment of the learned First Appellate Court is perverse and illegal.

12. In view of the same and considering all the evidence on record, no substance is found in the present application, and accordingly, the present Civil Revision Application stands dismissed.

(SANDIPKUMAR C. MORE, J.)

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