

Shabnoor

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

WRIT PETITION NO.14529 OF 2023

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Khed Charmarkar Industrial Sahakari
Sanstah Society Ltd. through its
Chairman Balaram B Khedekar

... Petitioner

V/s.

Madhusudan Ranchod & Anr.

... Respondents

Mr. Sachindra B. Shetye a/w Ms. Dhanashri
Mondkar -Hule with Mr. Akshay Pansare for
Petitioner.

CORAM : AMIT BORKAR, J.

DATED : JULY 2, 2024

P.C.:

1. Challenge in the petition is to the order passed by the Courts below passing decree in favour of landlord on the ground of non-user contemplated under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 .

2. The respondent-landlord filed Regular Civil Suit No.9 of 2011 alleging that the petitioner failed to use suit premises for the purpose for which it was rent out for period of 1st February 2009, six months prior to the institution of suit. The ground of non-payment of arrears was also raised. The petitioner contested the suit by filing written statement and denied the contentions raised by respondents. It is submitted that the petitioner was using the suit premises for carrying out his

business five days in a week and, therefore, the ground pleaded for eviction of petitioner is not correct.

3. During pendency of the suit, the Trial Court appointed a Court Commissioner who after giving notice to the petitioner submitted a report that the suit premises was not used by the petitioner at least for a period of 1 and 1 ½ years prior to the date of inspection.

4. The Trial Court framed necessary issues and allowed both the parties to lead their evidences. The landlord in support of his ground of non-user placed on record electricity consumption bills in relation to the suit premises which indicate that the electricity was disconnected permanently from March 2011. The material in the form of bills indicated that the use of electricity from 1st January 2010 till 1st January 2014 was almost nil.

5. Moreover, the Trial Court relied on the report of the Court Commissioner who visited the premises and submitted a report stating that the suit premises was closed for considerable period and the electricity was also disconnected. Based on aforesaid two factors, the Trial Court answered the issue of non-user in favour of landlord and decreed the suit directing the petitioner to hand over the possession.

6. The petitioner challenged the judgment and decree before the District Court. The District Court by the impugned judgment and order dismissed the appeal; hence, the

petitioner has filed present petition.

7. Mr. Shetye, learned advocate for the petitioner vehemently submitted that the findings recorded by the Courts below are based on inadmissible material. According to him, the electricity bills and the report of the Court Commissioner is not sufficient to record a finding of non-user as contemplated under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999. Therefore, he submitted that interference under Article 227 of the Constitution of India is called for.

8. I have carefully considered the material on record and perused the judgment and order of both the Courts below. On perusal of the record, it appears that the consumption of electricity for period of one year prior of filing of suit indicates that the premises was not used. Moreover, the report of Court Commissioner who inspected the suit premises indicates that the electricity connection was permanently closed, and the premises was not used by the petitioner.

9. As regards the maintainability of the appeal filed by the petitioner, the District Court recorded a finding that the petitioner is a co-operative society which is under liquidation and one Mr. D. J. Thakare is appointed as a liquidator of defendant's society. If this be so, an appeal on behalf of the society can be continued or filed by the liquidator. The society having been under liquidation is not entitled to either institution, or continue with the legal proceedings.

10. On overall consideration of the judgments of the Courts below I find no error of law to interfere with the well reasoned judgment of the Courts below.

11. The writ petition is, therefore, dismissed. No order as to costs.

(AMIT BORKAR, J.)