

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 176 OF 2021

Chandrakant Rajaram Samant (Deceased)

Thr. Lrs. Smt. Anjani @ Anjali

Chandrakant Samant & Anr.

... Applicants

Versus

Vithal Mandir Shri Vithoba Dev

Registered Trust & Ors.

... Respondents

Mr. Prajakt M. Arjunwadkar *for the Applicants.*

Mr. Ashutosh Kulkarni *for the Respondent Nos. 1 & 2.*

CORAM : SANDEEP V. MARNE, J.

DATE : 17 DECEMBER 2024.

P.C. :

1) Revisionary jurisdiction of this Court is invoked under provisions of Section 115 of the Code of Civil Procedure, 1908 to set up a challenge to the judgment and decree dated 9 April 2021 passed by Ad-hoc District Judge-1, Sangli dismissing Regular Civil Appeal No. 51 of 2014 and confirming the eviction decree dated 15 January 2014 passed by the Joint Civil Judge Junior Division, Sangli in Regular Civil Suit No. 425 of 2001.

2) I have heard Mr. Arjunwadkar, the learned counsel appearing for Revision Applicants and Mr. Kulkarni, the learned counsel appearing for Respondents/Plaintiffs. I have also gone

through the findings recorded by the Trial and Appellate Courts as well as the evidence placed on record through a compilation.

3) After having heard the submissions canvassed by the learned counsel appearing for parties, it appears that the suit was instituted seeking recovery of possession of the suit premises on the grounds of i) unlawful subletting, ii) erecting permanent structure without landlord's consent, iii) nuisance, iv) *bonafide* requirement of Plaintiffs and v) non-user. It appears that the Trial Court answered the issues relating to unlawful subletting, erecting permanent structure, *bonafide* requirement and non-user in favour of the Plaintiffs. The ground of nuisance was answered against the Plaintiffs and in favour of the Defendants.

4) The Appellate Court has reversed the finding of the Trial Court on the issues of unlawful subletting, erecting permanent structure and *bonafide* requirement. However, the Appellate Court has upheld the finding of the Trial Court on the issue of non-user. Thus, there are concurrent findings of fact against the Revision Applicants so far as the issue of non-user of the premises is concerned.

5) Perusal of the plaint would indicate that the Plaintiff averred in paragraph 7.4 thereof that the Defendant Nos. 1 and 2 had completely kept the premises on first and second floor shut without putting the same to any use. To prove that contention, Plaintiff led evidence of witness from electricity department, water supply department as well as of Court Commissioner.

6) Mr. Arjunwadkar would submit that pleadings in paragraph 7.4 of the Plaint were sketchy and did not make out the ground of continuous non-user of the suit premises for a period of six months prior to filing of the suit without reasonable costs. In my view, the averments "सुमारे ४ वर्षापासुन अखंडपणे पूर्णतः बंद आहे" clearly satisfies the requirement of pleading necessary for seeking recovery of possession of the suit premises under provisions of Section 16(1) (n) of the Maharashtra Rent Control Act, 1999. The moment landlord pleads that the suit premises are continuously not used for a period of six months prior to date of filing of the suit, and if the tenant comes out with a case that there was some reasonable cause for non-use of the premises, it is for the tenant to prove existence of such reasonable cause by leading evidence. In the present case, non-use of the premises is conclusively proved on the basis of evidence of the witness from electricity department, who has produced ledger in respect of the electricity meter installed at the suit premises showing zero consumption of electricity from March 2001 to January 2002. Mr. Arjunwadkar would attempt to discard the evidence of the witness from MSEDCL contending that the ledger was in respect of one Mr. Bapu Pandu Wagh, who is not a party to the suit and that Plaintiff did not prove that the said ledger was in respect of meter installed at the suit premises. It appears that Shri. Bapu Pandu Wagh is one of the trustees of the Plaintiff-Trust. More importantly if Defendant Nos. 1 and 2 wanted to dispute that the ledger produced by the witness is of the suit premises, they ought to have produced the electricity bill in respect of the suit premises, comparison of which could have easily proved as to whether the ledger was in respect of the meter installed at the suit premises or not. Defendant Nos. 1 and 2 on their own did not produce the electricity bill and withheld the same from the Court. True it is that

the burden of proving non-user is on the landlord. However, if such any suggestion is sought to be given that the ledger produced by the witness from MSEDCL is not in respect of the meter installed at the suit premises, the burden shifted on the Defendants to prove that the number of the electricity meter at the suit premises was different than the one reflected on the ledger. Plaintiff proved that there was zero consumption of electricity in respect of the suit premises for a period of six months prior to filing of the suit. Additionally, Plaintiff examined witness from water supply department, who also led evidence demonstrating that there was no consumption of water at the suit premises, where Defendant Nos. 1 and 2 were supposed to conduct the business of hotel, lodging and boarding. It is difficult to believe that the business of hotel, lodging and boarding could be conducted without supply of water or electricity.

7) To make the case of Defendant Nos.1 and 2 worse, Court Commissioner paid a visit to the suit premises and the Appellate Court has culled out the observations made by the Court Commissioner during the course of his visit to the suit premises. Faced with a situation that the Court Commissioner reported non-use of the suit premises on the basis of conditions prevailing thereat, Mr. Arjunwadkar seeks to discard the report of the Court Commissioner on the ground that Defendant Nos. 1 and 2 did not receive notice about Court Commissioner's visit at the suit premises. In fact if Defendant Nos. 1 and 2 were to be given notice of Court Commissioner's visit, they would have ensured that the premises are kept in such a manner that the Court Commissioner would be able to report use of the suit premises by Defendant Nos. 1 and 2. In any case, even if the evidence of the Court Commissioner is to be

momentarily ignored, the evidence led by witnesses from MSEDCL and water supply department leave no manner of doubt that the suit premises were indeed not being used by Defendant Nos. 1 and 2.

8) A conspectus of the above discussion is that no patent error is committed by the Trial and the Appellate Courts while recording concurrent findings of fact relating to non-use of the suit premises. The findings do not suffer from an element of perversity or an error in exercise of jurisdiction. Therefore, no ground is made out for exercise of revisionary power by this Court under Section 115 of the Code of Civil Procedure. Civil Revision Application is devoid of merits. It is accordingly **dismissed**, without any order as to costs.

[SANDEEP V. MARNE, J.]