

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 618 OF 2019

Shridhar Shivram Patil Sincd
Deceased Thr. Lrs Geeta Shridhar
Patil And Anr

. ...Applicants

Versus

Sunit Digambar Patkar
(since Deceased Thr. Lrs.)
Vijay Digamber Patkar And Ors

...Respondents

Adv. Prabha V. Badadare for the Applicant.

Mr. N. V. Walawalkar, Senior Advocate a/w. Adv. Suresh Sabrad for
the Respondents.

CORAM : RAJESH S. PATIL, J.

DATED : 8 MARCH 2024

PC.:

1. This Civil Revision Application challenges the concurrent findings recorded on the ground of “*non user*” of the Maharashtra Rent Control Act. The respondent is landlord of the suit premises who had filed for eviction on two grounds, however, subsequently one ground was given up and the suit proceeded only one ground of eviction, i.e., “*non user*”. The Written Statement was filed by the applicant (original defendant). Thereafter, issues were and a framed specific issue was framed

whether the defendant was not in occupation of the suit premises continues period of six months prior to the date of filing of the suit.

2. The plaintiff examined his son Vinay Patkar (P.W.1) and examined two officers of M.S.E.D.C.L. So also, the plaintiff examined the officers from Kalyan Dombivali Municipal Corporation, who brought on record the water bill of the suit premises. So also the plaintiff examined the secretary of the housing society in which the suit premises is situated. The defendant lead his evidence by examining his son as power of attorney holder of defendant.

3. After the evidence was lead by the parties, the Trial Court heard both the sides and by its judgment and decree dated 4 March 2013 decreed the suit on the ground of “non user”. The defendant being dissatisfied with the judgment and decree passed by the Trial Court, therefore, the appeal filed before the District Court. The District Court after hearing the parties by his judgment and order dated 24 June 2019, was dismissed the appeal filed by the original defendant.

4. Hence, the present Civil Revision Application is filed by

the original defendant challenging the concurrent findings recorded by both Courts on the ground of “non user”.

5. Learned counsel for the applicant submits that the plaintiff had purposely reissued the suit summons on the address of Nilesh Cooperative Housing Society so as to prove that the defendant was not residing in the suit premises. She further submits that nonavailability of electrical gadgets of power supply should not be a criteria to decide the defendant is not using the suit premises immediately six months before the filing of the suit. She further submits that unnecessary importance was given to the non availability of electrical appliances as also the gas cylinder in the suit premises to decide the ground of “*non user*” of the suit premises.

6. Mr. Walwalkar, learned counsel for the respondent submits that the suit premises itself has been demolished as of now. He submits that in the appeal memo filed before the District Court, the original defendants have themselves stated that they had filed a notice issued by the corporation, declaring the suit premises as dilapidated. During the pendency of the said suit, the corporation has demolished the Yashodip Patkar Chawl in which

suit premises was situated. Hence, according to Mr. Walwalkar, there is no merit in this Petition as the suit premises itself has been demolished. Mr. Walwalkar further submitted that the suit premises was vacated and was not in occupation of the defendant for continues period of six months before filing of the suit. Mr. Walwalkar, learned counsel for the respondent submits that the plaintiff initially had issued the suit summons at the address of suit premises, however, as the suit premises was locked the summons was returned back, therefore, the plaintiff had no option but, to reissue the summons on the address of the defendant where according to the Plaintiff, the defendant was resided. He further submitted that accordingly the suit summons itself was served on different address than the suit premises which prove that the defendant was not in use the suit premises.

7. Mr. Walwalkar, further submits that by leading evidence of his witnesses his client is proved that in the suit premises there is no electricity consumption, the suit summons was served on a different address and there is no reason to disbelieve the evidence lead by the plaintiff. He submitted that both the courts concurrently held that the defendant is not in use

of the suit premises and hence eviction decree was passed. He, therefore, submits that the Civil Revision Application should be dismissed with cost.

8. I have considered the argument of both the sides and evidence on record. In fact that the evidence of the plaintiff, has proved that there is no consumption of electricity at the address mentioned of the suit premises, so also the water bills of the corporation proves that the plaintiff and defendnat is not using the suit premises so also the suit summons itself was served on the defendant at the address which is different than that of suit premises, therefore, the according to me, no case is made out to entertain this Civil Revision Application, the same is dismissed. No cost.

9. If the applicant (original defendant) has deposited any compensation as per the direction of the District Court, then the said amount can be withdrawn by the landlord respondent herein along with accrued interest, if any.

(RAJESH S. PATIL, J.)