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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

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INTERIM APPLICATION NO.18404 OF 2023

IN

CIVIL REVISION APPLICATION (STAMP) NO.29071 OF 2023

Mujib @ Baba Hamid Khan & Ors. ...Applicants

V/s.

Jitendra M. Merchant, since deceased
through His L.Rs. & Ors. ...Respondents

Mr.Numan Jafri with Mr.Bharat Kothari for the Applicants.

Ms.Priyanka Pardeshi for the Respondents.

CORAM : RAJESH S. PATIL, J.

ATE : 23RD APRIL, 2024.

P.C. :-

1. This Interim Application is filed for condonation of delay. Ms.Pardeshi appearing for the Respondents has no objection if this Interim Application for condonation of delay is allowed and the Civil Revision Application be heard on merits.

2. This Interim Application is allowed in terms of prayer clause (a) and the Civil Revision Application is taken up for

hearing and final disposal.

3. This Interim Application is accordingly disposed of.

WITH
CIVIL REVISION APPLICATION (STAMP) NO.29071 OF 2023
WITH
INTERIM APPLICATION (STAMP) NO.29073 OF 2023

1. This Civil Revision Application has been filed by the original Defendant, challenging the concurrent findings recorded by the Trial Court and the Appellate Bench of the Court of Small causes, Mumbai for eviction on the ground of non-user.

2. The suit was filed on 27 July 2006. There is reference in the Appellate Court judgment to a table, which shows the consumption of electricity in the suit premises from 26 December 2005 till August 2006. For the months of January and February 2006, total consumption of electricity is only “3” units. Thereafter for the months of March and April 2006, total consumption of electricity is only “14” units and for the months of May and June 2006, the consumption of electricity is only “36” units. Further for the months of July and August 2006, the consumption of electricity is shown as “124”.

3. Ms.Pardeshi appearing for the Respondents submits that on 17 May 2006, MHADA started repairs of the suit building, hence the consumption of electricity from the month of May 2006 increased. She also pointed out the findings recorded by the Trial Court in paragraph 20. The said paragraph 20 records that the electricity consumption of the suit premises for the period from 24 October 2005 to 26 December 2005 is only “6” units and “0” unit for two meters. Thereafter electricity consumption for the period from 26 December 2005 to 24 February 2006 was “3” unit and “0” unit for two meters. She submitted that the suit premises is completely in lock and key and nobody is using the suit premises. She submits that hence both the Courts had concurrently held that the suit premises is not being used by the Defendant, hence the eviction decree on the ground of non-user.

4. I have heard counsel for both the sides and have gone through the documents on record.

5. The suit for eviction was filed on the ground of non-user of the suit premises for the period of fix months prior to the

filing of the suit. The suit was filed on 17 July 2006. An attempt was made by the Court Bailiff to serve the suit summons on the Defendant. The Court Bailiff's Report at Exhibit - 5 dated 1 November 2006 and 26 February 2007 show that the suit premises found lock. From Exhibit -5 it appears that the service of the suit summons was accepted by the Defendant in the Court through his advocate on 30 April 2007. The electricity bills from December 2005 till August 2006 shows minimal consumption of electricity. For the months of January 2006 and February 2006, the electricity consumption together is only "3" units. For the months of March 2006 and April 2006, it was only "14" units and for the months of May 2006 and June 2006, the electricity consumption was "36" units only. Though the Defendant had denied the said fact of non-user and he had come up with a case that due to his old age, he was unable to open the suit premises. However, in the written statement, the Defendant's case was that he was running the business with grand-son from 2002. However, in the cross-examination of the grand-son, he has come on record that he was doing the business of sugar-cane

with the deceased Defendant since 1990. Therefore, according to me there was variance between the pleadings and the evidence on record. According to me, both the Courts were right in recording the findings on the ground of non-user of the suit premises prior to six months of filing of the suit.

6. No case is made out to interfere with the concurrent findings recorded by both the Courts. Hence the Civil Revision Application is dismissed.

WITH
INTERIM APPLICATION (STAMP) NO.29073 OF 2023
IN
CIVIL REVISION APPLICATION (STAMP) NO.29071 OF 2023

1. In sequel this Interim Application is also disposed of.

(RAJESH S. PATIL, J.)