

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

CIVIL WRIT PETITION NO. 9453 OF 2024

Shri. Jaybhagwan Ramchandra Agarwal
@ Gupta Age : 86 years, Occupation :
Business Address: C/o. Suresh Provision
Stores 6, Laxmi Park, Maya Building,
Pune-411 030 } **...Petitioner**

: Versus :

Mrs. Shalini Umakant Darshane
since deceased, through Legal Heir
Mrs. Maya Rajendra Kulkarni
Age : 60 years, Occupation : Housewife
Residing at : 30/1/1, Yashashripurti
Co-operative Housing Society, Near
Mehendale Garage, Pune-411 004. } **..Respondent**

Mr. Prasad S. Dani, Senior Advocate i/b Mr. Sumedh S. Modak and Mr.
Aditya Bendre, *for the Petitioner.*

CORAM : SANDEEP V. MARNE, J.

DATED : 9 JULY 2024

JUDGMENT

1) This petition challenges concurrent findings of the Trial and the Appellate Court on the issue of non-user of the suit premises leading to decree for Petitioner's eviction. Petitioner/Defendant

accordingly challenges judgment and order dated 6 April 2024 passed by the Principal District Judge, Pune dismissing Regular Civil Appeal No. 909 of 2016 and confirming the decree of the Small Causes Court, Pune dated 25 July 2016 passed by the Additional Judge, Small Causes Court in Civil Suit No. 110 of 2005 directing him to vacate the suit premises.

2) Briefly stated, facts of the case are that Smt. Shalini Darshane originally owned the suit property comprising of commercial shop admeasuring 10 ft x 16 ft. situated on ground floor of building named Maya at Survey No.722/B, 6 Laxmi Park, Pune-411 030. The Defendant was inducted as tenant in respect of the suit premises at monthly rent of Rs.75/- excluding permitted increases. Plaintiff filed Suit No. 198 of 2001 before the Court of Small Causes Judge, Pune on 12 April 2001 seeking eviction of the Defendant on the ground of nuisance and annoyance and subletting. During pendency of said Civil Suit No. 198 of 2001, Plaintiff filed another suit bearing Civil Suit No. 110 of 2005 against the Defendant seeking recovery of possession on the ground of non-user on 4 March 2005. It appears that soon after filing of the suit, original Plaintiff-Smt. Shalini Umakant Darshane passed away and accordingly her legal heir, Maya Rajendra Kulkarni came to be substituted as Plaintiff in the suit on 6 August 2005.

3) Defendant appeared in the suit and contested the same by filing Written Statement. In his Written Statement, Defendant

also raised counterclaim seeking mandatory injunction against the Plaintiff for removal of lock put on common latrine and bathroom and for keeping the shop in possession of Plaintiff on northern side of the suit premises in good condition by removal of garbage in front of the said shop. Defendant also prayed for mandatory injunction against the Plaintiff to restrain her from obstructing the right of the Defendant to use water from well. Defendant also prayed for damages of Rs.5,000/-. It appears that after amendment of the plaint after the death of the original Plaintiff, Defendant also filed additional Written Statement. Plaintiff filed Written Statement to the counterclaim filed by the Defendant.

4) It appears that the earlier suit, being Civil Suit No. 198 of 2001, came to be dismissed by the Small Causes Court by decree dated 28 September 2010 thereby rejecting the ground of nuisance and annoyance and subletting. The decree passed in Civil Suit No. 198 of 2001 came to be confirmed by the Principal District Judge by dismissing Civil Appeal No. 2 of 2011 by judgment and order dated 4 April 2015.

5) In Civil Suit No. 110 of 2005, Plaintiff-Maya Rajendra Kulkarni led evidence. Plaintiff also examined Shri. Sayas Sopanrao Darade, Deputy Executive Engineer, MSEDCL, Pune. Plaintiff also examined Mr. Anil Ramchandra Jagtap, Assistant Secretary, Krushi Utpana Bazar Samiti, Pune. Defendant examined himself in support of his defence as well as his claim in the counterclaim. Defendant also

examined Mr. Jayant Ambadas Rokade- resident in front of the shop premises, Mr. Manoj Jaibhagvan Gupta-partner of the firm Gupta Trading Company, Mr. Uddhav Gote-Clerk working in Agricultural Produce Market Committee, Pune and Mr. Satyaprakash Laxminarayan Mittal, whose father was running a shop in the same building.

6) After considering the evidence on record, the Small Causes Court proceeded to decree Civil Suit No. 110 of 2005 by judgment and order dated 25 July 2016 holding that the Defendant was not using the suit premises six months prior to institution of the suit. The counterclaim filed by the Defendant was rejected. The Defendant was directed to handover possession of the suit premises to the Plaintiff. The Defendant filed Regular Civil Appeal No. 909 of 2016 before the District Judge, Pune. However, by judgment and order dated 6 April 2024, the Principal District Judge has dismissed the Appeal filed by the Defendant-Petitioner.

7) Aggrieved by the decree passed by the Small Causes Court as confirmed by the District Court, the Petitioner has filed the present petition.

8) I have heard Mr. Dani, the learned senior advocate appearing on behalf of the Petitioner. He would submit that both the Courts below ought to have appreciated the fact that the earlier suit filed by the Plaintiff alleging subletting was dismissed on 28

September 2010. The said suit proceeded on allegation that Defendant was not using the suit premises and had let someone else to use the same. That the said allegation was found to be false and a specific finding was recorded by the Trial Court while dismissing Civil Suit No. 198 of 2001 that Defendant was running business in the suit premises on the date of dismissal of the suit. That since Civil Suit No. 110 of 2005 was filed during pendency of earlier Suit No. 198 of 2001, rejection of ground of subletting must automatically result in rejection of ground of non-user as well. In the light of the specific finding recorded in the earlier suit that the Defendant is running business in the suit premises, it was not open for the Small Causes Court to rule that the suit premises were not being used by the Defendant six months prior to institution of Civil Suit No. 110 of 2005.

9) Mr. Dani would further submit that the Small Causes Court has erred in decreeing the suit only on the ground of less electricity consumption. That the concerned witness was summoned only for the purpose of production of documents and was not competent to give evidence. It is common ground that the said witness did not visit the premises and was not competent to depose about non-consumption or less consumption of electricity in the suit premises. That the Court below has erroneously taken into consideration consumption in respect of only selected months of July 2004, September 2004, November 2004 and January 2005 and March 2005. He would submit that specific evidence was produced to prove

purchase of goods for sale in the shop operated at the suit premises and the Appellate Court has erred in rejecting the said evidence.

10) Mr. Dani would further submit that mere non-use of the suit premises does not automatically entail eviction under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (**MRC Act**) and that it has to be satisfied that such non-use is without reasonable cause. Taking me through the plaint, Mr. Dani would submit that there is no pleading that the suit premises were not being used by the Defendant without reasonable cause. That in the entire evidence also, there is no deposition by Plaintiff that non-use was without any reasonable cause. That in absence of pleadings and evidence showing non-existence of reasonable cause, decree under Section 16(1)(n) of the Maharashtra Rent Control Act could not have been passed. In support of his contention that there has to be specific pleadings about non-use without reasonable cause, Mr. Dani would rely upon following judgments:

*i. C.R. Shaikh Versus Lilabai D.Rohida and another*¹

*ii. Shri Cyrus Behram Irani and another Versus Shri Parvis Burjorji Engineer (since deceased by his heir) deft. no. (1) Dinoo Parviz Engineer and another.*²

*iii. Ashok Vithal Chavan & others Versus Baburao Sakharam Bhagat*³

*iv. Shantanu Baburao Palaskhedkar Versus Vinayak Mahadeo Sainkar*⁴

1 1980 SCC OnLine Bom 221.

2 1991 Mah. R.C. J. 158.

3 2002 SCC OnLine Bom 522.

4 2002(1) Mh.L.J. 262.

11) I have considered the submissions canvassed by Mr. Dani and have gone through the judgments in previous round of litigation, judgment in present round of litigation, pleadings filed by the parties as well as the evidence appearing on record.

12) It must be observed at the very outset that concurrent findings of facts are recorded by both the Courts below that Defendant was not using the suit premises for a continuous period of six months immediately preceding the date of the suit. The suit in the second round of litigation being Civil Suit No. 110 of 2005 was instituted on 4 March 2005. Therefore, it was incumbent for the Plaintiff to prove that six months prior to institution of suit, there was continuous non-user on the part of the Defendant. Plaintiff pleaded in the plaint as follows :

10. The Plaintiff has reliably learnt and has physically observed, being in the same property that, the Defendant's suit shop is closed since July 2004 till date. The suit shop kept locked unused for more six than months herebefore and thus, the Defendant does not require the suit property for his occupation, business and use. The Defendant has taken out all his material, grocery and such articles from the suit shop and the suit shop has been practically vacated and kept without any articles. The Defendant has also taken away all electrical fittings, fridge, fans, from the suit shop. The Plaintiff states that, due to the non-user of suit the shop, the suit shop has become a residing place for rats and like animals causing damage, not only to the suit shop, but create nuisance to the Plaintiff, who is residing in the same property. As the suit shop is kept locked and unused since more than six months, is the Plaintiff is entitled for the actual physical possession of the suit shop. The Defendant, who has already shifted to Market Yard long back and not in need of the suit shop.

11. The Plaintiff states that, the Defendant has gradually, step by step, shifted all his business to Market Yard, Pune and doing his business in different different names. The Defendant has closed down the business of retail sale of grocery items and dealing in wholesale business and thus, the Defendant does not require suit premises for the business of the Defendant. The Plaintiff states that, for the wholesale business, the State of Maharashtra and the Local authority has provided special Zone, wherein the business of wholesale is been done. The Market Yard, Pune is the Special Zone so provided and in the said vicinity this Local Authority has provided all the amenities and facilities, keeping in view the convenience of the traders and the requisites for such businesses like infrastructure for heavy vehicles, carrying the goods, the safety measures for protecting the goods, collection of cesses etc. and thus otherwise also, the suit premises is not fit for use of the Defendant of his other businesses.

13) Thus specific case was pleaded that the suit shop was closed since July 2004 till the date of institution of the suit. To prove this assertion, Plaintiff in addition to leading her own evidence also examined Deputy Executive Engineer in MSEDCL, who produced on record Consumer Personnel Ledger in respect of Consumer No.170010429121 in the name of J. Gupta from October 1996 to August 2013. He has also filed on record the original bill of the current month. The Small Causes Court has considered the electricity consumption at the suit premises from September 2004 to March 2005 from the Ledger produced by the said witness and found that consumption in July 2004 was 79 units, September 2004- 2 units, November 2004-3 units, January 2005-1 unit and March 2005-28 units. It has come in evidence that the meter was not faulty and was working perfectly. Though Mr. Dani has criticised the Trial and the Appellate Court for selectively considering the consumption for only few months, he has not pointed out that in

respect of remaining months of October 2004, December 2004 and February 2005, the consumption of electricity was higher. I therefore do not find any serious error on the part of the Small Causes Court and the Appellate Court in considering the consumption in respect of some of the months for considering the trend of consumption of electricity. Plaintiff came up with a specific case that the suit shop was shut since July 2004 and that the Defendant had already shifted to Market Yard. This assertion on the part of the Plaintiff is proved by non-consumption of electricity at the suit shop during July 2004 to March 2005.

14) Additionally, Plaintiff also produced on record, photographs showing empty racks in the suit shop. The defence of the Defendant to the said photographs was that the goods were removed for undertaking painting and polishing work in the shop. However, no evidence was produced on record to prove that such painting or polishing work was indeed performed in the suit shop in March 2005. Therefore, photographs showing empty racks in the shop coupled with non-consumption of electricity by the Defendant leads credence to the inference that the suit shop was not used by the Defendant for six months prior to institution of the shop.

15) Coming to the aspect of reasonable cause sought to be highlighted by Mr. Dani, no doubt non-user on the part of the tenant must be without reasonable cause for entailing a decree for eviction under Section 16(1)(n) of the M.R.C. Act. Section 16(1)(n) provides thus:

(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

16) It is Mr. Dani's contention that non-existence of reasonable cause must be pleaded in the plaint. In support, he has relied upon judgments in *C.R. Shaikh, Cyrus Behram Irani, Shantanu Baburao Palaskhedkar* and *Ashok Vithal Chavan* (supra).

17) So far as pleadings are concerned, the plaint specifically avers the exact reason for non-user of the premises with a pleading that '*defendant has taken out all his material, grocery and such articles from the suit shop and the suit shop has been practically vacated and kept them without any articles.*' It was further pleaded that '*The Defendant has also taken away all electrical fittings, fridge, fans, from the suit shop.*' It has further pleaded that '*The Defendant, who has already shifted to Market Yard long back and not in need of the suit shop.*' Thus, absence of reasonable cause for non-use of the suit premises is specifically pleaded in the plaint. It is not necessary that the words '*without reasonable cause*' must be used in the plaint. Shifting of entire business out of the suit shop to another place leading to non-use of the suit shop leads to inference of absence of any reasonable cause for non-use of the suit premises. In my view, therefore it cannot be said that there is total absence of pleadings with regard to reasonable cause in the plaint.

18) In my view, non-user without reasonable cause, in addition to pleading, must be established before the Court for seeking decree for eviction under Section 16(1)(n) of the Act. In fact in **Ashok Vithal Chavan** (supra) *Justice Khanwilkar* (as he then was) has held, after referring to the judgments in **C.R. Shaikh** and **Cyrus Behram Irani** that '*Accordingly, having regard to the admitted position from the record that the petitioners did not plead nor adduce any evidence to even suggest that the demised premises were locked for more than six months by the respondent-tenant "without any reasonable cause" as has been observed by this Court in the above said decision, no cause of action would arise to invoke that ground.*' The above finding would indicate that if not pleading atleast evidence can be led to suggest that non-user is without any reasonable cause.

19) The objective behind inclusion of the words '*without reasonable cause*' in Section 16(1)(n) of the M.R.C. Act must also be borne in mind. The said words appear to have been inserted in the relevant clause so as to save decree of eviction being passed where the tenant is required to go out of the tenanted premises due to reasonable cause such as service related transfer, out station assignment, education of children, restriction on use put by statutory authorities etc. Therefore, a tenant a who has completely shifted out of the suit premises lock, stock and barrel, alongwith all his articles and is operating his business from another premises, cannot be permitted to take aid of technicality of non-pleading of the words '*without reasonable cause*' in the plaint to save decree of eviction. What is also

required to be noted in the present case that in the Written Statement, Defendant has not given any cause as to why the premises were not being used during the relevant period. On the contrary, he came up with a specific defence that he continued using the premises during the relevant period. The only point of time when ground of non-use admitted was by him is in respect of March 2015, that too for a period of 20 to 22 days when the work of painting and polishing was allegedly under way. However, there is no explanation as to why there is no electricity consumption in the shop from July 2004 to March 2005. In my view therefore, non-user for a period of 6 months prior to filing of the suit without reasonable cause is fully and completely established.

20) The Trial and the Appellate Court have rightly rejected the lame defence sought to be raised by the Defendant about procurement of grocery items for sale in the suit premises. Both the Courts have rightly taken note of the fact that Gupta Trading Company, from whom grocery is shown to have been purchased, is a Partnership Firm in which Defendant is one of its partners. Thus, an internal arrangement between two entities was sought to be relied to create evidence that some grocery items were purchased for sale from the suit shop. I do not find any error on the part of the Trial and the Appellate Court in rejecting the said defence.

21) After considering the overall conspectus of the case, I am of the view that no case is made out by the Petitioner-Defendant for interference by this Court in exercising extraordinary jurisdiction

under Article 227 of the Constitution of India in concurrent findings recorded by the Small Causes Court and the Principal District Judge. Writ Petition is accordingly **dismissed** without any order as to costs.

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[SANDEEP V. MARNE, J.]