

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 570 OF 2024
ALONGWITH
INTERIM APPLICATION NO. 14381 OF 2024

Municipal Corporation of Greater Mumbai }**Applicant**

: **Versus** :

Mr. Kiran Harishchandra Rane and anr. }**Respondent**

Mr. Som Sinha a/w. *Mr. Om Suryawanshi, for the Applicant-M.C.G.M.*

CORAM : SANDEEP V. MARNE, J.

Dated : 11 November 2024.

P.C. :

1) The revisionary jurisdiction of this Court under the provisions of Section 115 of the Civil Procedure Code is invoked for setting up a challenge to the judgment and decree dated 20 September 2024 passed by the Appellate Bench of the Small Causes Court dismissing Appeal (AI) No.137/2019 and confirming the eviction decree dated 11 December 2018 passed by the learned Judge of the Small Causes Court in R.A.E. Suit No.337/552 of 2011. The suit has been decreed on solitary ground of non-user of the premises.

2) I have heard Mr. Sinha, the learned counsel appearing for the Revision Applicant/Municipal Corporation and have considered the submissions canvassed by him.

3) It is an undisputed position that the Applicant/Municipal Corporation was running a School in the suit premises since the year 1967. It is an admitted position that the School was required to be shifted from the suit premises and the said School is now being run at an altogether different premises at Shindewadi, Dadar. In the Written Statement itself, the Municipal Corporation admitted that School is no longer operated in the suit premises. The Applicant-Municipal Corporation however raised a defence in the Written Statement that it was operating its Election Office in the suit premises. Plaintiff led evidence to the effect that the suit premises were kept in locked condition. In the light of admitted position that School was not being run in the suit premises coupled with the defence taken by the Municipal Corporation that Election Office was being operated in the suit premises, the onus shifted on the Municipal Corporation to prove that it was actually operating Election Office in the suit premises. However, the Municipal Corporation did not lead any evidence to prove that Election Office was indeed operated in the suit premises at any point of time during the relevant six months period. It did not examine any officer or employee who was posted in the said Election Office and who discharged duties during his posting in the suit premises. Thus, no evidence is led by the Municipal Corporation to prove its defence of operation of Election Office from the suit premises. In my view, therefore the Trial Court has rightly accepted the ground of non-user. No interference is warranted in the concurrent findings recorded by the Trial and the Appellate Courts on the issue of non-user of the suit premises. The Revision Application is devoid of merits and is accordingly **dismissed** without any order as to costs.

4) With dismissal of the Revision Application, Interim Application taken out therein for stay does not survive. The same also stands disposed of.

5) After the order is dictated, Mr. Sinha would pray for stay of the eviction decree for a period of 4 weeks. It appears that the Appeal has been dismissed on 20 September 2024 and the Applicant-Municipal Corporation is without any protection since then. It has also been proved that the Applicant/Municipal Corporation is neither running a School nor operating its Election Office in the suit premises. In that view of the matter, request for stay is rejected.

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[SANDEEP V. MARNE, J.]