



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

6 WRIT PETITION NO. 5191 OF 2000

Prabhakar Ramdas Wani
Age. 55 years, Occ. Service,
R/o. Navi Peth, Jalgaon,
District Jalgaon.

.. Petitioner

VERSUS

Vasudeo Mohan Wani
Age. 40 years, Occ. Business,
R/o. 23, Navi Peth,
Near Shive Garage, Jalgaon,
District Jalgaon.

.. Respondent

Mr. Girish Rane, Advocate for the petitioner.

Mr. Adinath P. Kuber h/f. Mr. A.G. Talhar, Advocate for the respondent.

CORAM : KISHORE C. SANT, J.

DATE : 18.09.2025

ORAL JUDGMENT :-

01. Heard learned Advocate for the parties. By order dated 08.10.2001 Rule has been issued in this petition.

02. Challenge in this petition is to a judgment and order passed by the learned 5th Additional District Judge, Jalgaon dated 30.11.19999 in Civil Appeal No. 87 of 1995. The petitioner is original defendant-tenant in the suit bearing Regular Civil Suit No. 110 of 1991 filed by the

respondent-landlord, seeking eviction of the petitioner.

03. Facts in short are that the landlord had given two rooms on rent to the petitioner bearing Municipal House No. 23 from City Survey No. 2020/7B situated in Navi Peth, Jalgaon. The suit was filed on the ground of arrears of rent of more than six months and it was also filed on the basis of notice of attornment dated 11.12.1990 for non-user of suit premises for more than six months for bona fide requirement. Recovery of arrear of rent etc. were also prayed.

04. The learned Trial Judge on the basis of evidence held that the plaintiff has proved the notice of attornment. The suit premises was not used for more than six months and that the suit premises is required for bona fide use. The learned Trial Court thus on giving affirmative finding on the point of bona fide requirement, non-user of suit premises and notice of attornment decreed the suit by judgment and decree dated 07.03.1995.

05. The tenant assailed the judgment and decree by filing Civil Appeal in the Court of learned District Judge, Jalgaon bearing Civil Appeal No. 87 of 1995. In the appeal the learned Appellate Court reversed the

finding so far as arrears of rent is concerned and affirmed the finding of the learned Trial Court so far as standard rent is concerned. The finding so far as notice of attornment and non-user are concerned, same are confirmed. So far as bona fide requirement is concerned, the learned Appellate Court held that the issue does not survive in view of finding recorded on the earlier points and dismissed the appeal.

06. Learned Advocate Mr. Rane for the petitioner vehemently argued the Writ Petition. He submits that both the Courts below have wrongly held that the plaintiff has proved notice of attornment and ground of non-user. He submits that it was necessary for the landlord to strictly prove the notice of attornment. To prove the non-user of the premises, there was no strict proof. He submits that even the ground is taken that plaintiff is not landlord within the meaning of explanation (B) to section 13(2) of the Bombay Rent Act. Both the Courts below failed to appreciate the ratio laid down in the judgment in the case of Balkrishna H. Patil Vs. S. Madhukar Madhavrao Deshpande, 1999 (2) Mh.L.J. 304. The respondent was the only person, who was collecting the rent. He thus submits that the writ petition deserves to be allowed.

07. The learned Advocate for the respondent vehemently argued

that on two points both the Courts have recorded finding of fact. Non-user of the premises is necessarily a question of fact. The notice of attronment is also proved, on the basis of the facts brought before the Court. Thus, on these two grounds, there is no scope to entertain the Writ Petition. He submits that the possession is already taken from the petitioner. Learned Advocate Mr. Rane also pointed out that he has already made a statement that possession of the suit premises is already lost and therefore no interim relief was granted.

08. This Court finds that since there is concurrent finding of fact by both the Courts and considering scope of petition under Article 227 of the Constitution of India, this Court does not find that case is made out to entertain with the petition. The petition being devoid of merit, stands dismissed with no order as to costs. Rule discharged.

[KISHORE C. SANT, J.]