

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3780 OF 1998

Tukaram Moraba Jaunjal (since deceased)

1. Dattatraya Tukaram Jaunjal (since deceased) through his LRs

a. Laxmibai Dattatraya Jaunjal

b. Sunil Dattatraya Jaunjal

c. Ravindra Dattatraya Jaunjal

2. Shrikant Tukaram Jaunjal

3. Vasant Tukaram Jaunjal

3A. Sujata Vasant Jaunjal

3B. Sandip Vasant Jaunjal

3C. Rohit Vasant Jaunjal

...Petitioners

Versus

1. Mangala Balkrishna Patwardhan

2. Vasant Balkrishna Patwardhan

3. Mukund Balkrishna Patwardhan

...Respondents

Mr. Avinash Patil, for the Petitioners.

Mr. Anilkumar Patil, a/w Zeel Jain and Digvijay Patil, for
Respondent Nos.1 and 2.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 1st JULY, 2025

PRONOUNCED ON : 10th JULY, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and decree dated 30th June, 1998 passed by the learned

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Additional District Judge, Sangli, in Regular Civil Appeal No.105 of 1989, whereby the appeal preferred by the petitioners – defendant Nos.1a to 1c against a decree of eviction passed by the Trial Court in RCS/401/1985 came to be dismissed by affirming the said decree.

3. The background facts can be stated in brief as under:

3.1 The respondents – plaintiffs are the owners of the shop premises. Tukaram Morba Jaundal, the original defendant-the predecessor-in-title of the petitioners, was a monthly tenant of the suit shop situated at Suit No.463/12 at Maruti Square, Gaon Area, Sangli (“the suit shop”). The original defendant was running a Sweet Mart in the suit shop.

3.2 A suit for eviction of the defendant came to be instituted with the assertion that the suit shop was let out to the original defendant only for the purpose of carrying on the business of Sweet Mart, the defendant had kept the suit shop locked without any cause for over 15 months prior to the institution of the suit. A notice was addressed to the defendant on 27th May, 1985 thereby terminating the tenancy of the defendant with effect from 30th June, 1985. Despite service of notice the defendant neither delivered the possession of the demised

premises. Nor gave reply to the said notice. Hence, the suit for a decree of eviction and arrears of rent.

3.3 The defendants resisted the suit by filing a written statement. It was categorically denied that the suit shop was let out only for the purpose of carrying on the business of Sweet Mart. According to the defendant, the suit shop was let out to carry on any business. The defendant and his family members had been carrying on diverse businesses, at various point of time, in the suit shop to the knowledge of the plaintiffs, for over 50 years. While denying that there was non-user of the suit shop, it was contended that the wife of the defendant had taken ill and, eventually, passed away, and, thus, the defendant was required to keep suit shop closed. Consequently, there was no non-user without reasonable cause.

3.4 The Trial Court, after appraisal of the evidence and material on record, returned the finding of non-user in favour of the plaintiffs – landlord. The fact that there was no electricity consumption from June 1984 till July 1985 and there was no reply to the pre-suit notice (Exhibit-19) alleging non-user of the suit shop by the defendant, weighed with the learned Civil Judge. On the aspect of the cause ascribed by the defendant for the non-user, the learned Civil Judge was of the view that

though the explanation that on account of the illness and eventual death of the defendant's wife, the shop premises was kept closed, appeared reasonable yet the said explanation was not sufficient to account for the non-user for over one and half year preceding the institution of the suit. Thus, in the view of the Trial Court, the defendant failed to discharge the onus of proof of a reasonable cause for the non-user.

3.5 Being aggrieved, the tenants preferred an appeal before the District Court. By the impugned judgment and order, the learned Additional District Judge dismissed the appeal concurring with the view of the Trial Court. The learned District Judge was of the view that the explanation offered by the defendants for the non-user was not acceptable. Moreover, in view of the categorical contentions in the written statement, that the defendant was running diverse businesses in the suit shop alongwith his family members, the inability of the defendant to run the suit shop for a brief period, even if taken at par, does not constitute justifiable explanation as the other members of the family could have used the suit shop.

3.6 Thus, both the Courts have recorded concurrent findings of facts that there was non-user of the suit shop for a

continuous period of six months immediately preceding the institution of the suit without any reasonable cause.

4. Being aggrieved, the defendants – tenants have invoked the writ jurisdiction.

5. I have heard Mr. Avinash Patil, the learned Counsel for the petitioners, and Mr. Anilkumar Patil, the learned Counsel for the respondents, at some length. The learned Counsel for the parties took the Court through the pleadings, documents and material on record.

6. Mr. Avinash Patil, the learned Counsel for the petitioners, took a slew of exceptions to the impugned judgment. Mr. Patil would urge that the learned Trial Judge as well as the learned District Judge have committed an error in law in passing the decree of eviction on the ground of non-user without satisfying themselves that the non-user was for “continuous period of six months” and “without a reasonable cause”. In the issues framed by the learned Civil Judge, the word “continuous” is conspicuous by its absence. Thus, the learned Civil Judge misdirected himself in decreeing the suit without appreciating the evidence from the perspective as to whether there was, “continuous non-user” for the period of six months immediately proceeding the suit. Secondly, the courts below have fallen in

error in not properly appreciating the reasonability of the cause for the non-user ascribed by the defendants. The consideration by the courts below on the said aspect is extremely unsatisfactory, urged Mr. Avinash Patil.

7. To lend support to the aforesaid submissions, Mr. Avinash Patil placed reliance on the judgments of this Court in the cases of *Ashok V. Chavan and others vs. Baburao Sakharam Bhagat*¹ and *C. R. Shaikh vs. Lilabai D. Rohida and another*².

8. Per contra, Mr. Anilkumar Patil, the learned Counsel for respondent Nos.1 and 2, would urge the concurrent findings of facts recorded by the courts below are not open for interference in exercise of the writ jurisdiction under Article 227 of the Constitution of India. On the basis of the evidence adduced by the parties, according to Mr. Anilkumar Patil, a very strong case of non-user was made out. The learned Additional District Judge had considered both the aspects of continuous non-user and the reasonability of the cause for non-user. In these circumstances, this Court, in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, may not interfere with the concurrent findings of facts, urged Mr.

Anilkumar Patil.

1 2002(6) Bom. CR 736.

2 1981 Mh.LJ 437.

9. I have given careful consideration to the submissions canvassed across the bar and the material on record. Section 13 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 ('the Rent Act, 1947') began with a non-obstante clause to give effect to the policy of the legislature i.e. prevent unreasonable eviction of the tenants. Section 13(1) thus incorporated the statutory grounds of eviction which entitled the landlord to recover possession of the premises if he satisfied the Court the existence of the specified grounds. Clause (k) of Section 13(1) incorporated cesser of user of the demised premises for the purpose for which it was let out, as a ground for eviction:

"13. When landlord may recover possession:

(1) Notwithstanding anything contained in this Act but subject to the provisions of sections 15 and 15A, a landlord shall be entitled to recover possession of any premises if the court is satisfied-

... ..

(k) 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; or"

10. From the phraseology of Section 13(1)(k) to obtain a decree of eviction the following ingredients were required to be satisfied; (a) non-user of the premises for the purpose for which the premises were let out; (b) for a continuous period of six months

prior to the date of institution of the suit; (c) non-user should be without reasonable cause.

11. In the case of *Nilesh Laxmichand and anr. vs. Shantaben Purushottam Kakad (since deceased) by LRs.*³, the Supreme Court expounded the import of Section 16(1)(n) of the Maharashtra Rent Control Act, 1999, which is *pari materia* with Section 13(1)(k) of the Rent Act, 1947. The Supreme Court enunciated the elements which were required to be established for eviction on the said ground under Section 16(1)(n) as under:

“23. The following elements must be established under Section 16(1)(n)—the premises must have been let out for a particular purpose; there must be non-user by the tenant for the purpose; the non-user must be without reasonable cause; the non-user must be for a continuous period of six months immediately preceding the date of the suit.”

12. In the case of *Vora Rahimbhai Haji Hasanbhai Popat vs Vora Sunderlal Manilal & Anr*⁴ the Supreme Court expounded the object and scheme of the aforesaid clause. It was, *inter alia*, observed that the scheme of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, as is evincible from the Preamble, was to consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions. The control had to be brought

3 2019(6) SC 542.

4 1985(4) SCC 551.

in because of the scarcity of accommodation in the cities. If this was the Preamble of the Act it cannot be accepted that a tenant may take a premises on rent and keep it locked for years together without using it in the absence of a reasonable cause. The intendment of the legislature could be carried out only when the premises is used and not kept vacant for years together.

13. With the aforesaid clarity as to the ingredients to be satisfied and the object of Section 13(1)(k) of the Rent Act, 1947, reverting to the challenge sought to be mounted to the impugned judgment by Mr. Avinash Patil, on the count of absence of fulfillment of the ingredient of the non-user for “continuous period” it would be necessary to first consider the averments in the plaint. The plaintiffs categorically asserted that the original defendant had kept the suit shop locked for over 15 months preceding the institution of the suit without any reason. Mr. Avinash Patil would urge that, there was no pleading on both the points i.e., non-user for a continuous period of six months and without reasonable cause.

14. I find it difficult to accede to the submission of Mr. Avinash Patil for the reasons more than one. Firstly, the plaintiffs have averred that the suit shop has been kept locked

for over 15 months. It was further asserted that the suit shop was closed without any reason. These assertions of the plaintiffs were sufficient to satisfy the requirement of pleadings. A statement that the suit shop was kept locked for over 15 months without any reason, subsumes in its fold both the elements.

15. Reliance by Mr. Avinash Patil on the judgment of the learned Single Judge of this Court in the case of ***Ashok Chavan*** (supra) does not seem to advance the cause of the defendants. In the said case, the landlord had neither pleaded nor adduced any evidence to even suggest that the demised premises were kept locked for more than six months by the defendant, “without any reasonable cause”. Thus, this Court held that no cause of action arose for invoking the provisions contained in Section 13(1)(k) of the Rent Act, 1999.

16. The decision of a learned Single Judge of this Court, in the case of ***C. R. Shaikh*** (supra) on which reliance was placed by Mr. Avinash Patil is also of no assistance to the defendants as in the said case also there was no pleading on the elements of continuous non-user and without reasonable cause. The observations in paragraph 12 of the said judgment make this position absolutely clear. They read as under:

“12. If we analyse the plaint in the light of the requirement of the section, it will be seen that the words “without reasonable cause” are wholly absent in the plaint. If that is so, I do not think that it could be said that the plaintiff had made out a case under section 13(1)(k) so that, the tenant could be required to meet such a case. It is also not shown and not alleged that the non use of the premises had been for a continuous period of six months immediately preceding the date of the suit. The section emphasises the situation, and a continuation of a situation and its existence at the date of the suit. If such a situation and its existence for a continuous period of 6 months does not exist at the time when the suit is launched, then the cause of action does not accrue. Even if the tenant has not used the premises for a period of 6 months some time before the filing of the suit, or for more period, that would not give a landlord a cause of action. That state of affairs must continue till the date of the filing of the suit. If therefore, a tenant who had not used the premises for a long period, but had started using them before the date of the suit, the cause of action is gone. It is therefore necessary to emphasis the words “continuous” and “immediately preceding the date of the suit” occurring in clause (k) of sub-section (1) of section 13 which only bring out clearly that the cause of action claimed is on that account. As I pointed out, this must be further supported by an allegation that the non use was without reasonable cause. As pointed out, neither of these two aspects are clearly present in the plaint.

17. The fact-situation in the case at hand is materially distinct. There is adequate pleadings on both the elements. In addition, it is necessary to note that in the written statement, the defendant did not categorically controvert the claim of the plaintiffs that the suit shop had not been used for the purpose of business for over 15 months. An explanation was sought to be offered that on account of the ill-health and the eventual demise of the wife of the original defendant – tenant, the latter was compelled to keep the suit shop shut. Moreover, the plaintiffs had adduced unimpeachable evidence in the form of

the non-consumption of electricity in the suit shop since June, 1984 to July, 1985; the month preceding the institution of the suit.

18. In the light of the aforesaid nature of the defence of the defendants, coupled with a very strong evidence in the form of non-consumption of the electricity in the suit shop for the period of June, 1984 to July, 1985, the plaintiffs discharged the onus of proof of non-user of suit shop for the statutory period preceding the institution of the suit. It was then for the defendants to prove *animus rivertendi and corpus possessionis*.

19. In the case at hand the defendant attempted to wriggle out of the consequences of non-user by contending that as his wife suddenly fell ill and, eventually, passed away, he was forced to keep the suit shop closed. Both the Trial Court as well as the Appellate Court, have noted that the wife of the original defendant was suffering from jaundice and passed away on 28th February, 1985. She was hospitalized for a fortnight before her death. Though both the Courts were persuaded to accept the reasonability of the explanation yet the Courts found the said explanation was not sufficient to account for the non-user for a long period commencing from June, 1984 till the institution of

the suit, as was evident from the non-consumption of the electricity in the suit shop.

20. The aforesaid inferences drawn by the courts below, based on appreciation of evidence, cannot be said to be unsustainable. Even if the possible period of hospitalization, preceding the death of wife of the defendant, and the time required for the rites and rituals thereafter, is liberally construed, the explanation does not satisfactorily account for the non-user. The non-user of the suit shop prior to, and post, the demise of the wife of the defendant, for a considerable period dents the reasonability of the explanation.

21. In any event, this Court in exercise of the supervisory jurisdiction under Article 227 cannot interfere with the findings of facts recorded by the courts below. The jurisdiction is circumscribed by the limit of ensuring that the courts and tribunals act within the bounds of their authority. In exercise of supervisory jurisdiction, this Court cannot correct mere errors of fact by examining and re-appreciating the evidence. The power of supervision under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of the statutory power of the Court of appeal. The High Court cannot convert itself into a Court of Appeal. *[Babhutmal*

Raichand Oswal vs Laxmibai Raghunath Tarte 1975(5) SCC 858].

22. The conspectus of aforesaid consideration is that this Court in exercise of its supervisory jurisdiction does not find such infirmity in the impugned judgment as to warrant interference. The writ petition, therefore, deserves to be dismissed.

23. Hence, the following order:

: O R D E R :

- (i) The petition stands dismissed with costs.
- (ii) Rule stands discharged.

[N. J. JAMADAR, J.]

At this stage, the learned Counsel for the petitioners seeks four months time to vacate the suit shop.

As the petitioners were running a commercial establishment the prayer is justifiable.

Four months time is granted to the petitioners to vacate the suit shop subject to furnishing usual undertaking within a period of four weeks from today.

[N. J. JAMADAR, J.]