

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.17024 OF 2024

Madhushree Prafull Ghatage

...Petitioner

Versus

Pratibha Arun Sapre

...Respondent

Mr. Abhay Khandeparkar, Senior Advocate a/w. Mr. Rushikesh Bhagat i/b. Warerkar & Warerkar, for the Petitioner.

Ms. Nirvi Goradia i/b. Mr. Aniruddha Sapre, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 3rd MARCH 2025

P. C.:

1. Heard Mr. Khandeparkar, learned Senior Counsel appearing for the Petitioner and Ms. Goradia, learned Counsel appearing for the Respondent.

2. The challenge in the present Writ Petition filed under Article 227 of the Constitution of India is to the legality and validity of the order dated 20th September 2024 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-26 in R.A.E. Suit No.713 of 2021.

3. It is the submission of Mr. Khandeparkar, learned Senior Counsel appearing for the Petitioner that wrongly the burden has been put on the Petitioner-Plaintiff to prove that the suit premises have not been used by the Defendant without reasonable cause for continuous period of six months immediately preceding the date of the institution of the suit. He submits that once the initial burden regarding non-user by the Defendant is discharged by the Plaintiff, then the burden shifts on the Defendant to prove that the non-user is for reasonable cause. He therefore, submits that the impugned order is required to be quashed and set aside.

4. On the other hand, Ms. Goradia, learned Counsel supports the impugned order and submits that no interference in the impugned order is warranted.

5. At the outset, it is required to be noted that, the suit has been filed by the Petitioner-landlord for eviction under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999. The relevant portion of Section 16(1)(n) reads as under:

“16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-.....

....(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.”

(Emphasis added)

Thus, it is clear that the landlord has to prove that there is non-user for a continuous period of six months immediately preceding the date of the suit and it is for the tenant to prove that said non-user is for reasonable cause.

6. Learned Trial Court by the order dated 24th November 2022 framed the issues. The said issues read as under:

“1) Whether the plaintiff proves that defendant is not using the suit premises without reasonable cause for a continuous period of six months immediately preceding the date of the institution of this suit?

2) Whether the plaintiff proves that defendant has lost the protection under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999?

3) Whether the plaintiff is entitled for vacant and peaceful possession of the suit premises and for injunction as prayed for?

4) Whether the plaintiff is entitled for mesne profits as prayed?

5) Whether the suit as framed and filed is maintainable?

6) What order and decree?”

7. As the learned Trial Court has framed the issue No.1 to the effect that whether the Plaintiff proves that the Defendant is not using the suit premises without reasonable cause for a continuous period of six months immediately preceding the date of the institution of the suit, the Plaintiff filed Exhibit-26 Application in said suit seeking that the said issue No.1 be split into two separate issues as under:

“1. Whether the Plaintiff proves that the Defendant has not used the suit premises for a continuous period of six months immediately preceding the date of the institution of this suit?

1A. If the answer to the above issue is in the affirmative, whether the Defendant proves that she

has a reasonable cause for not using the suit premises as above?”

8. The learned Trial Court has allowed the said Application at Exhibit-26 by order dated 20th September 2024 and framed issue No.1A as under:

“1A) Whether defendant has proved that she has reasonable cause for not occupying the suit premises for the period of continuously six months immediately preceding the date of suit?”

9. Thus, the issues which have been now framed pursuant to the order dated 24th November 2022 read with order dated 20th September 2024 are as follows:

“1) Whether the plaintiff proves that defendant is not using the suit premises without reasonable cause for a continuous period of six months immediately preceding the date of the institution of this suit?”

1A) Whether defendant has proved that she has reasonable cause for not occupying the suit premises for the period of continuously six months immediately preceding the date of suit?”

10. It is the submission of Mr. Khandeparkar, learned Senior Counsel that still burden has been kept on the Plaintiff to prove

that the suit premises is not used by the Defendant for a continuous period of six months, immediately preceding the date of the institution of the suit, without reasonable cause and the same is contrary to law.

11. The reading of both the issues i.e. issue Nos.1 and 1A clearly shows that initial burden is on the Plaintiff to prove that the suit premises are not used for a continuous period of six months and thereafter if the said initial burden is discharged, then the burden is on the Defendant to prove that the Defendant has reasonable cause for not occupying the premises for a continuous period of six months immediately preceding the date of the institution of the suit. Both the issues Nos.1 and 1A are required to be read in this manner to be in consonance with Section 26(1)(n) of the Maharashtra Rent Control Act, 1999. Otherwise, the burden of proving that “non-user is for reasonable cause” which is exclusively in the knowledge of the Respondent will be placed on the Petitioner-Plaintiff.

12. Thus, with the clarification as above, no interference under Article 227 of the Constitution of India is warranted.

13. The Writ Petition is accordingly disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]

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