

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17408 OF 2025

Khalil Puttan Beg

...Petitioner

Versus

Mariyam Abdul Kader Diath

...Respondent

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Mr. Sameer Gazdar, for the Petitioner.

CORAM: MADHAV J. JAMDAR, J.
DATED: 23 DECEMBER 2025

P.C.:

1. Heard Mr. Gazdar, learned Counsel appearing for the Petitioner.
2. By the present Writ Petition filed under Article 227 of the Constitution of India the challenge is to the legality and validity of the Judgment and Decree dated 4th February 2025 passed by the learned Appellate Bench of the Small Causes Court at Mumbai in Appeal No.96 of 2024 as also to the Judgment and Decree dated 30th March 2024 passed by the learned Judge, Small Causes Court, Mumbai in RAE Suit No.170 of 2015.
3. By the impugned Judgment and Decree, concurrent finding has been recorded by both the Courts that the Respondent-landlady has proved the non-user. It has been observed by both the Courts that earlier consumption of electricity units of the Petitioner is about 150-250 units. However, thereafter since January 2013 upto March 2014

consumption was very negligible. For the months of June, July and August, 2014 it was 0 units and for May 2014 it was 3 units and for few months the same was about 11, 9, 25 etc. units. Thus, continuously the electricity consumption was very negligible.

4. It is the submission of Mr. Gazdar, learned Counsel for the Petitioner that the Petitioner's mother was not well and therefore he was constrained to go to Baroda, Gujarat and therefore non-user is for valid reason. However, both the Courts have not accepted the said contention by analyzing the evidence on record.

5. As per the settled legal position, if it is established that the tenant is not using the subject premises then the burden is on the tenant to show that the said non-user is for the purpose of some valid reason. Both the Courts have not accepted the case of the Petitioner that he was constrained to stay at Baroda, Gujarat for looking after his mother. The Petitioner during his cross-examination failed to give particulars of the doctors treating mother. Thus, the said finding is arrived at on the basis of evidence on record.

6. It is further submission of learned Counsel for the Petitioner that landlady has accepted the rent from him, even after filing of the Plaint. However, that cannot be a ground for upsetting the concurrent decree passed on the ground of non-user.

7. It is further submitted that landlady has played fraud and obtained the decree. However, perusal of the record shows that by analyzing the evidence on record particularly electricity consumption and by not accepting the reason given for non-user, both the Courts have concurrently held that ground of non-user is established. Therefore, there is no substance in the said contention.

8. Accordingly, in the facts and circumstances, no interference in the impugned Order is warranted.

9. The Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]