

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15522 OF 2025

Dilip R Shastri

...Petitioner

Versus

Vishwanath Balkrishna Avalaskar & Ors.

...Respondents

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VITTHAL
KUDHEKAR

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Mr. Rajesh S. Datar a/w Akshay J. Kandarkar i/b Druti R Datar, for the
Petitioner.

Ms. Vasudha C. Narvekar, for Respondent No.2.

CORAM: MADHAV J. JAMDAR, J.
PRONOUNCED ON: 12 JANUARY 2026
UPLOADED ON: 14 JANUARY 2026

JUDGMENT:

1. Heard Mr. Datar, learned Counsel appearing for the Petitioner and
Ms. Narvekar, learned Counsel appearing for Respondent No.2.

2. By the present Writ Petition filed under Article 227 of the
Constitution of India the Petitioner is challenging the legality and
validity of the following Orders:

- i. Order dated 6th May 2025 passed by the learned Judge,
Small Causes Court, Mumbai below Exhibit-92 in RAE Suit
No.1258/1894 of 2009.
- ii. Order dated 4th July 2025 passed by the learned Judge, Small
Causes Court, Mumbai in respect of admissibility of
documents produced by the Plaintiff alongwith list Exhibit-94.

- iii. Order dated 3rd October 2025 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-104 in RAE Suit No.1258/1894 of 2009.

3. It is the submission of Mr. Datar, learned Counsel for the Petitioner that the Plaint has been amended from time to time, however, the documents which are mentioned in Paragraph No.5 of the Evidence Affidavit of the Plaintiffs dated 21st February 2025 were not pleaded in the Plaint and therefore Paragraph No.5 of the Evidence Affidavit needs to be discarded. He therefore submits that all these impugned Orders are required to be quashed and set aside and Application bearing Exhibit-104 be allowed and Application bearing Exhibit-92 be dismissed. He further submits that the Order dated 4th July 2025 in respect of admissibility of documents produced by the Plaintiff alongwith list Exhibit-94, is also required to be set aside.

4. On the other hand, Ms. Narvekar, learned Counsel for Respondent No.2 submits that the Suit is filed on the ground of non-user and in Paragraph No.4 of the Plaint, it is specifically mentioned that the Plaintiff's crave to refer to and rely upon the copies of the Electric Consumption Pattern of the suit premises along with the Electoral Roll of the suit property as and when produced.

5. Perusal of the record shows that RAE Suit No.1258/1894 of 2009 has been filed *inter alia* on the ground of non-user. The Suit was filed in

October 2009. The relevant Paragraphs of the Plaint are Paragraph Nos.3 to 5-A, which read as under :-

*“3. The area of the suit premises viz Block No7 is **not in use and occupation and kept locked for a period of more than 6 months.***

*4. The suit premises were used as a residence occupied by the Original Defendant but **since last more than 6 months, as the Original Defendant is not using the suit premises it is almost kept in locked and unused condition. The Plaintiff's crave to refer to and rely upon the copies of the Electric Consumption Pattern of the suit premises along with the Electoral Roll of the suit property as and when produced.***

*4-a. The Plaintiff state that the Defendant is not using the premises for the purpose for which it was let out to him. The Plaintiff states that the Defendant is not using the suit premises for the purpose for which it was let out to him. The Plaintiff state that the **Defendant is not using the premises without reasonable cause** & kept the suit premises under locked & key preceding six months at the time of instituting the suit.*

*5. The Plaintiff's submit that the said Original Defendant non user of the suit premises is/was **contrary to the provisions of Section 16(1)(A) 16(1)(n) of the Maharashtra Rent Control Act, 1999.** The Plaintiff's state that the Defendants have no reasonable ground for keeping the premises locked and unused. The Plaintiff's submit that the Defendant has rendered himself/themselves liable to be evicted under provision of Section 16(1)(a) 16(1)(n) of the Maharashtra Rent Act.*

5-A. The Plaintiff crave leave to refer to rely upon the electric bills in respect of the suit premises.”

(Emphasis added)

6. Thus, the Plaintiff has specifically mentioned that the Defendants are not occupying the suit premises and have kept the same locked and

unused for a period of more than 6 months. In the Plaint itself, the Plaintiff has craved leave to refer to and rely upon the copies of the Electric Consumption Pattern of the suit premises along with the Electoral Roll of the suit premises as well as the Electric Bills pertaining to the suit premises as and when produced.

7. In this background of the matter, Paragraph No.5 of the Affidavit of Evidence dated 21st February 2025 is also relevant, which reads as under :-

“5. I say that after filing of the suit I applied to BEST Authority for the Statement of Electric Consumption in respect of the suit premises on 09/09/2015 as my present Advocate advise me to apply for Electric consumption prior to six months preceding to filing of the Suit. The Concern Authority accepted my application. Hereto annexed Application dated 09/09/2015 made by me under Right to Information Act, 2005 to BEST Authority as Annexure ‘C’. The said Application written and signed by me. The contents are true and correct. It bears Original Stamp of BEST Authority. The same be taken on record and mark as Exhibit.

I have received Reply on 06th October, 2015 from BEST Authority alongwith the Statement of Electric Consumption in respect of the suit premises which shows Nil consumption and or minimum consumption till filing of the suit. Hereto annexed Original Reply dated 06th October, 2015 with Statement of Electric Consumption in respect of the suit premises for the period of 22/01/2009 till 2015 i.e. for the period prior to six months of filing of the suit as Annexure ‘D’ colly. The same may be taken on record and mark as Exhibits. I am making application for seeking permission to file Annexure “C” and “D” under Order VII Rule 14 of Civil Procedure Code, 2002.”

(Emphasis added)

8. Thus, *inter alia*, what is sought to be produced by the Plaintiff by filing the said Affidavit of Evidence is Application dated 9th September 2015 submitted to the BEST Authorities and the Reply dated 6th October 2015 received from the BEST Authorities along with the Statement of Electric Consumption in respect of the suit premises for the period of 22nd January 2009 till the year 2015, which includes the period prior to 6 months from filing of the Suit.

9. Section 16 of the *Maharashtra Rent Control Act, 1999* (“**Rent Act**”) provides that a landlord shall be entitled to recover possession of any premises on the grounds more particularly set out in Section 16. Section 16(1)(n) provides that if 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, is one of the grounds of eviction.

10. Thus, it is very clear that the documents which are produced along with the Evidence Affidavit are very relevant for deciding the issue of non-user.

11. Although it is the contention of Mr. Datar, learned Counsel for the Petitioner that despite amending the Complaint from time to time, these documents are not set out in the Complaint, however, as per the settled legal position, evidence need not be pleaded. What is pleaded in the Complaint is that the suit premises have been kept in locked and unused condition

for a period of 6 months before the filing of Suit.

12. It is also stated in the Plaint that the Electric Consumption Pattern of the suit premises along with the Electoral Roll of the suit property as also the Electric Bills in respect of the suit premises will be relied upon. In any case, as per the settled legal position, evidence is not required to be pleaded.

13. The learned Trial Court, while rejecting the Application bearing Exhibit-104, has specifically observed that the Defendants will get ample opportunity to cross-examine PW-1. The documents marked as evidence by the impugned Order dated 4th July 2025 have been marked subject to cross-examination. The Plaintiff has filed an Application under Order VII Rule 14 of the *Code of Civil Procedure, 1908* (“CPC”), bearing Exhibit-92, seeking permission to produce these documents. The learned Trial Court, while granting leave, has observed that the Defendants will get an opportunity to cross-examine the Plaintiff’s witness.

14. Accordingly, no interference in the impugned Orders is warranted under the jurisdiction of this Court under Article 227 of the Constitution of India.

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

[MADHAV J. JAMDAR, J.]