



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.128 OF 2023
WITH
INTERIM APPLICATION NO.2177 OF 2023
WITH
INTERIM APPLICATION NO.2178 OF 2023
IN
CIVIL REVISION APPLICATION NO.128 OF 2023

Harishchandra Yashwant Sonawane
and Anr.

...Applicants

V/s.

Chandrakant Narayan Tambe and Ors.

...Respondents

Mr. Aniruddha Sapre with Ms. Nirvi Goradia for the Applicants.

Mr. Rohan P. Surve for the Respondents.

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 18 MARCH 2026.

PRONOUNCED ON: 27 MARCH 2026.

Judgment:

1) The Applicants have challenged the judgment and decree dated 5 December 2022 passed by the learned District Judge-2, Kalyan, dismissing the Appeal preferred by them and confirming the judgment and Decree dated 29 December 2009 passed by the learned Joint Civil Judge, Junior Division, Kalyan in Regular Civil Suit No.227 of 2002 directing their eviction on the ground of non-user of the suit premises

under Section 16(1)(n) of the Maharashtra Rent Control Act, 1999 (**MRC Act**).

2) Respondents-Plaintiffs are the owners and landlords in respect of building named-Tambe Chawl located at Joshi Baug, Kalyan, bearing Municipal Ali No.53, House No.253. One room in the said chawl admeasuring 10ft x 15ft are the '**suit premises**'. Mr. Yashwant Sonawane was inducted as monthly tenant in the suit premises and after his death his wife-Smt. Vimal Sonawane became tenant. According to the Plaintiffs the Defendant had kept the suit property in locked condition in September-1992. Plaintiffs also claim *bonafide* requirement in respect of the suit premises. Plaintiffs accordingly served notice dated 15 December 2001 to the Defendant terminating the tenancy, which was returned with remark 'not claimed, returned to sender'. The Plaintiffs accordingly filed Regular Civil Suit No.227 of 2002 before the Court of Joint, Civil Judge, Junior Division, Kalyan, for recovery of possession of suit premises on the ground of non-user, default in payment of rent and *bonafide* requirement. It appears that the Defendant did not appear in the Suit and therefore, the Suit came to be decreed *ex-parte* on 19 September 2002. Plaintiffs filed execution proceedings. By issuance of warrant of possession, Plaintiffs took over possession of the suit premises. In March-2002 Defendant filed application for setting aside *ex-parte* decree and for restoration of the possession. The *ex-parte* decree was set aside and the Suit was restored. It appears that the possession of the suit premises was also restored in favour of the Defendant. The Defendant filed written statement and resisted the Suit. The Plaintiffs adduced evidence of two witnesses and relied on several

documents. The Defendant did not examine herself but led evidence of five witnesses. After considering the pleadings, documentary and oral evidence, the Trial Court rejected the grounds of default in payment of rent and *bonafide* requirement. However, the Trial Court proceeded to decree the Suit on the ground of non-use of suit premises for a period of six months preceding the date of filing of the Suit. The Trial Court accordingly directed the Defendant to handover possession of the suit premises to the Plaintiffs by judgment and decree dated 29 December 2009.

3) Original Defendant filed Regular Civil Appeal No. 21 of 2010 before the Court of District Judge, Kalyan, challenging the eviction decree of the Trial Court. During pendency of the Appeal, the Defendant passed away and her legal heirs were brought on record. The Plaintiffs apparently did not file any cross-objections. The Appellate Court has confirmed the eviction decree on the ground of non-user under Section 16(1)(n) of the MRC Act. Aggrieved by the judgment and order dated 5 December 2022 passed by the Appellate Court, the legal heirs of the original Defendant have filed the present Revision Application. It appears that this Court had sent parties for mediation. However, parties were unable to resolve the dispute through mediation.

4) Mr. Sapre, the learned counsel appearing for the Applicants submits that the Trial and the Appellate Courts have erroneously accepted the grounds of non-user. He submits that the Defendant proved use of the suit premises by examining as many as 5 witnesses, which included neighbouring tenants. That as against this, Plaintiffs did

not produce any concrete documentary evidence to prove non-use of the premises. That the Defendant was merely visiting her son's house due to old age and medical requirement. That medical condition of the Defendant was proved by examining the Doctor. That mere occasional stay by old lady at her son's house, that too for medical treatment, cannot be treated as continuous non-use of the suit premises. He submits that the electricity bills for the concerned period were inadvertently not filed before the Trial Court. He submits that the Applicants have filed Interim Application No.2177 of 2023 for leading additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908 (**the Code**), by which relevant electricity bills are produced showing consumption of electricity. He thus, submits that the Plaintiffs have thoroughly failed to prove non-use of the suit premises whereas the Defendant has clearly established use of the suit premises. He submits that the Trial Court and the Appellate Court have erroneously put the burden on the Defendant to prove use of the premises when the said burden was on the Plaintiffs. He would pray for setting aside the orders passed by the Trial and the Appellate Court.

5) Mr. Surve, the learned counsel appearing for the Respondents/Plaintiffs opposes the Revision Application contending that there are concurrent findings of non-use recorded against the Applicants. That there is no perversity in the said findings. That the Defendant did not examine herself to prove her own use of the suit premises. That there is gross discrepancy in the claim of ailments suffered by the Defendant in the testimony of the Doctor and neighbouring tenants. That the Defendant did not produce electricity

bills of relevant period and withheld the same from courts below. That therefore continuous non-use is clearly proved. That DW1 did not depose in his evidence that Defendant was under treatment of Dr. Dani. He submits that the entire evidence has been appreciated and re-appreciated by the Trial and the Appellate Courts for concurrently upholding the ground of non-user. He accordingly prays for dismissal of the Civil Revision Application.

6) Rival contentions urged on behalf of the parties now fall for my consideration.

7) Though eviction of the Defendant was sought on three grounds of (i) default in payment of rent, (ii) *bonafide* requirement and (iii) non-use, the Trial Court has accepted only the ground of non-use under Section 16(1)(n) of the MRC Act and the grounds of default in payment of rent and *bonafide* requirement are rejected. The Appellate Court has concurrently upheld the ground of non-use of the suit premises by the Defendant.

8) The Defendant's husband was the original tenant in respect of the suit premises and the tenancy rights were inherited by the Defendant upon death of her husband. It was Plaintiffs' pleaded case that since September-1992 the Defendant had shifted her residence to another place and she had continuously kept the suit premises locked. The Suit was filed on 15 June 2002 and under the provisions of Section 16(1)(n) of the MRC Act, the relevant period was from 15 December 2001 to 14 June 2002. The Defendant herself did not step into the witness box and

examined her son as DW1, who admitted that his mother-Defendant was residing with him at Karunpushp Society. He however, claimed that from 10 November 2001 to 24 September 2003 his mother was sick and had shifted her residence temporarily with the witness. Thus, non-presence of the Defendant in the suit premises was virtually admitted by DW1. Since Section 16(1)(n) of the MRC Act uses the expression 'reasonable cause' the Defendant set up a case that her absence from the suit premises was owing to the treatment needed due to her sickness. Once absence from the suit premises was admitted, the burden of proving non-use by Plaintiffs got discharged and the onus to prove reasonable cause shifted on the Defendant.

9) Both the Courts have concurrently held that the Defendant has failed to discharge the onus of proving reasonable cause for non-use. So far as the excuse of ailments allegedly suffered by the Defendant is concerned, there appears to be lot of discrepancies in the evidence. The Defendant examined Dr. Dani (DW3), who did not depose about any cardiac ailment of Defendant. He apparently did not maintain any medical record in respect of the Defendant. As against this, DW2, DW4 and DW5 deposed that Defendant was suffering from cardiac ailments. Dr. Dani did not support the said version of the witnesses. The Appellate Court has considered the evidence of Defendant's witness on the issue of 'reasonable cause' and has recorded following findings in paragraphs 29 to 31:-

29] Here, the case is set up by the defendant through Kavita (DW.2), Ramesh (DW.4) and Prakash (DW.5) that defendant was suffering from cardiac ailment does not hold any water as neither it is the pleading of defendant that defendant is suffering from any cardiac

ailment nor her treating Dr. Shirish Dani (DW.3) have stated that defendant was suffering from cardiac ailment. Therefore, the evidence of Kavita (DW.2), Ramesh (DW.4) and Prakash (DW.5) is not helpful for defendant to show that defendant had reasonable cause which prevented her to reside in the suit premises.

30] Now, it remains only with testimony of Harishchandra (DW.1) and Dr. Shirish Dani (DW.3). From the evidence of Harishchandra (DW.1) it does not appear that the condition of defendant was so severe, it was not possible for her to walk without any support. The evidence of Dr. Shirish Dani (DW.3) reveals that the condition of defendant was so severe that without support she was not in a position to balance herself. She was brought to the hospital with support. Therefore, it appears to me that either Harishchandra (DW1) is suppressing facts from the Court or Dr. Shirish Dani (DW.3) has been told to depose these facts to gain sympathy of the Court so as to bring the case of defendant under "reasonable cause".

31] Dr. Shirish Dani (DW.3) has not maintained any record of medical examination of defendant. The ailment of arthritis at least in old age can not be avoided. Therefore, it was quite possible for defendant to produce on record documentary medical evidence in support of the evidence of Dr. Shirish Dani (DW.3) that he was treating doctor of defendant. Harishchandra (DW.1) has not stated in his evidence that defendant Vimal at any relevant of time was taking treatment of Dr. Shirish Dani (DW.3). Even there is no pleading on this count. Therefore, the evidence of both these witnesses in absence of the evidence of defendant Vimal and documentary medical evidence, does not inspire confidence. Therefore, it clearly appears to me that defendant Vimal had putforth the ground of her ailment on account of arthritis to bring her case under exception of reasonable cause. Therefore, it appears to me that defendant miserably failed to prove any reasonable cause which prevented her to reside in the suit premises. Therefore, defendant will have to face rigor of this section.

10) Thus, the evidence produced by the Defendant in support of plea of 'reasonable cause' was riddled with discrepancies. The plea of 'reasonable cause' is rightly not accepted by the Trial and the Appellate Courts. Mr. Sapre has invited my attention to Interim Application No. 2177 of 2023 in support of his contention that the Defendant actually possessed electricity bills of the relevant six months period but could

not produce it before the Trial Court due to inadvertence. The Defendant has sought to lead additional evidence under Order XLI Rule 27 of the Code. In my view, however, attempt to produce electricity bills at this belated stage would be an exercise in futility. The Defendant admitted before the Trial Court about her absence from the suit premises, but raised the pretext of sickness for establishing reasonable cause for non-use. Once absence from suit premises is admitted, it is not necessary to lead additional evidence to prove use of the suit premises during the relevant six months. It is quite another aspect that even the concerned electricity bill depicts insignificant/minimum consumption of electricity and it is difficult to record a conclusive finding that the suit premises were indeed used during the relevant six monthly period.

11) After going through the findings recorded by the Trial and the Appellate Courts, I am unable to notice an element of perversity or jurisdictional error in those findings. In exercise of revisional jurisdiction, this Court is not supposed to re-appreciate the evidence and record conclusions different than the one concurrently recorded by the Trial and the Appellate Courts upon appreciation and re-appreciation of evidence. I, therefore, do not find any valid reason to interfere in the impugned decree of eviction. I am also satisfied that the Defendant was not in need of suit premises and has fully shifted at her son's place by keeping the suit premises locked. In that view of the matter, no interference is warranted in the impugned orders passed by the Trial and the Appellate Courts.

12) Civil Revision Application is devoid of any merits. It is accordingly **dismissed**.

13) With dismissal of the Revision Application, nothing survives in the Interim Applications, which are accordingly **disposed of**.

[SANDEEP V. MARNE, J.]