

MHRG170122112019 		Presented on : 25/07/2019 Registered on : 25/07/2019 Decided on : 29/04/2026 Duration : 06Y 09M 04D
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**IN THE COURT OF DISTRICT JUDGE-3 PANVEL-RAIGAD**  
**AT PANVEL.**

(Presided over by S.R. Chavan )

**Regular Civil Appeal No. 653/2019**  
**(Old Civil Appeal No. 102/2019)**  
**Exh. No. 26/A**

**Smt. Veena Manohar Rao** )  
Age : 57 years, Occupation : Agriculture,)  
R/at : Bazar Peth, Uran and )  
Uppadhyevadi, Near Datta Temple, )  
Kumbhar Vada, Tal. Uran, District-Raigad) ..Appellant.  
(Ori. defendant)

**Versus**

**Mrs. Vinita Ganesh Sheth** )  
Age : 39 years, Occupation : Household,)  
Through Power of Attorney Holder, )  
Mr. Ganesh Manoharrao Sheth )  
Age : 42 years, Occupation : Business, )  
R/at – 1 and 5 Nayan Apartment, )  
C- Wing, Mora Road, Tal. Uran, )Respondent  
District- Raigad. ) (Ori. Plaintiff )

**Appearance :**

Adv. Shri. A. E. Chavan for the appellant.

Adv. Shri. Rajendra M. Kunte for the respondent

**: J U D G M E N T :**

(Delivered on 29/04/2026)

Appellant (Original Defendant) preferred this appeal against the Judgment and Decree dated 31/10/2013 passed by Ld. Civil Judge Junior Division, Uran, Dist. Raigad in Regular Civil Suit No. 88/2011. (Hereinafter the parties are referred as per their original nomenclature in the suit).

**02. The brief facts of the Plaintiff's case is as under:-**

That property bearing CTS Nos.96, 96/1, 96/2 along with building house No.420 standing thereon within the limits of Municipal Council situated at Mauje Uran, Dist. Raigad is owned by plaintiff. Except for the area on the ground floor rented to Tukaram Kashinath Mali, the rest of the area on ground floor in the building is rented to the defendant for monthly rent of Rs.25/-. The tenancy shall be on a monthly basis, as per the English calendar month. Initially, the suit premises was used for as Warehouse/Godown for keeping coal by defendant's father-in-law. Thereafter, defendant's father-in-law stated hotel business. After demise defendant's father -in-law the tenancy right is passed on to defendant. Since, then defendant and her husband is paying the rent. The defendant's father-in-law had started a hotel under the name 'Shri Niwas Lodging' and had obtained a license under the Shops and Establishments Act. After his demise, the said license was transferred to the name of the defendant. However, the license was not renewed, and after 1999, the registration of the said

hotel was cancelled. Initially, there was an electricity connection in the rented premises, but it was subsequently disconnected. At present, there is only one electricity connection in House No. 420, which is located in the portion of the premises given to Mali. There is also only one water supply connection, which is currently disconnected. The defendant was not using the suit premises for the purpose for which it was let or for any other purpose for continuous period of more than three-four years. The suit premises is in closed condition. Therefore, plaintiff is entitled for possession of the suit premises. The plaintiff filed present suit for recovery of possession of suit premises.

**03.** The defendant had appeared in the suit, but failed to file her written statement. Hence, matter proceeded without written statement vide order below Exh. 1 dated 02/07/2012.

**04.** After recording evidence of plaintiff and hearing, learned Trial Court partly decreed the suit of the plaintiffs on 31/10/2013 and thereby ordered the defendant to deliver vacant possession of suit premises within two months. Being aggrieved and dissatisfied with the judgment and decree of the Learned Trial Court, the defendant has preferred this appeal on the ground that, the Ld. Trial Court failed to appreciate that, plaintiff failed to prove non-user of the suit premises. The advocate engaged by the defendant did not contest the proceeding on behalf of the defendant. The defendant is widow and she is not conversant with the provisions of law. There are no pleading and evidence on behalf of the

defendant. On these and other grounds prayed for setting aside impugned judgment and decree. The appellant/defendant prayed for remand of the matter for fresh hearing.

**05.** Heard learned advocate Shri. A. E. Chavan for the appellant/defendant and learned advocate Shri. R. M. Kunte for respondent/plaintiff. The following points arise for my determination and my findings on each of them with reason thereon are as under:-

<b>Sr. No.</b>	<b>POINTS</b>	<b>FINDINGS</b>
1.	Whether plaintiff has proved that, suit premise has not been used by the defendant without reasonable cause for the purpose for which it was let for a continuous period of six months immediately preceding the date of the suit?	Yes
2.	Whether the plaintiff has proved that she is entitled for mesne profit?	No
3.	Whether the appellant has shown sufficient cause for non-filing of written statement and non-participation in trial?	No
4.	Whether the matter deserves remand for re-trial?	No
5.	Whether impugned Judgment and decree dated 31/10/2013 passed by the Learned Trial Court require any interference ?	No
6.	What Order?	As per final Order.

**REASONS**

**06.** Plaintiff in order to substantiate his claim examined her power of attorney Ganesh Manoharraji Sheth at Exh.17 as PW1. Plaintiff also examined witness Ravi Ramesh Solanki PW 2 at Exh.27. The plaintiff also produced on record power of attorney at Exh.18, Extracts of City Survey Property Nos. 906/1, 906/2, 906/3 at Exhs.19 to 21, Assessment extract of Municipal House No. 420 at Exh. 22, Rent receipt given to defendant at Exh.23, Letter dated 21/04/2011 issued by shop inspector at Exh. 24, Letter dated 24/03/2011 issued by Uran Municipal Council at Exh.25 and information of electricity connection at Exh.26. The plaintiff closed her evidence by filing evidence close pursis at Exh. 28.

**07.** The learned advocate for plaintiff has argued that, suit summon was duly served upon the defendant. She engaged an advocate, but failed to file her written statement and failed to cross-examine the plaintiff's witnesses. The reasons for non participation in the suit are not proper. The defendant cannot take advantage of her own negligence and seek reopening of proceedings. The plaintiff has proved that, premises, which had been let out to the defendant, remained unused for a continuous period exceeding three-four years. The judgment and decree of the Learned Trial Court is correct and proper.

**08.** Per contra, learned advocate for defendant argued that, the defendant had engaged an advocate. She was relied upon advocate, but due to negligence or inadvertence, no

written statement was filed. The plaintiff's witness was not cross-examined by the defendant. The defendant is not aware of provisions of law and court procedure. The decree has been passed without affording effective opportunity of hearing, the decree is therefore based on untested evidence. Moreover, plaintiff has failed to prove that premises was not used for continuous period of more than six months.

### **POINT NO.1**

**09.** The respondent/plaintiff instituted a suit for recovery of possession of the suit premises on the ground that the premises, which had been let out to the defendant, remained unused for a continuous period exceeding three-four years.

**10.** Power of attorney of plaintiff was examined at Exh. 17. He reiterated the contents of plaint. He deposed that, plaintiff is his wife. He is deposing for plaintiff. The suit premises was given to defendant for running Hotel business. However, suit premises has not been used by the defendant without reasonable cause for the purpose for which it was let for a continuous period of six months immediately preceding the date of the suit. "Shri. Niwas" lodging was registered on 04/01/1978. The said registration was valid till 1999. Thereafter, said license was not renewed. Since, then Hotel and lodging business was discontinued. There is no water supply connection or electricity connection in the name of the defendant in suit premises.

**11.** The plaintiff has also examined Ravi Ramesh Solanki at Exh. 27. He deposed that, the suit premises house No.50 is situated 50 steps away from his residence. The suit premises is easily visible from his residence. The suit premises is in closed condition since last four years. No one is using the suit premises for last four years.

**12.** The defendant appeared in the suit through her advocate, but she failed to file her written statement. She failed to cross-examine plaintiff's witnesses. The evidence of plaintiff remained unchallenged.

**13.** After analysis of the oral and documentary evidence on record, it appears that, property bearing CTS Nos.96, 96/1, 96/2 along with building house No.420 standing thereon within the limits Municipal Council situated at Mauje Uran, Dist. Raigad is owned by plaintiff. Except for the area on the ground floor rented to Tukaram Kashinath Mali, the rest of the area on ground floor in the building is rented to the defendant's father-in-law. Initially, the suit premises was used for as Warehouse/Godown for keeping coal by defendant's father-in-law. Thereafter, defendant's father-in-law started hotel business. After demise defendant's father-in-law, the tenancy right is passed on to defendant. Since, then defendant was paying rent. Rent receipt dated 01/06/2011 is produced on record at Exh. 23. The defendant's father-in-law had started a hotel under the name 'Shri Niwas Lodging' and had obtained a license under the Maharashtra Shops and Establishments Act, 1948. After his demise, the said license was transferred to

the name of the defendant. The plaintiff obtained information of the said license by submitting her application to Shop Inspector on 07/04/2011. Accordingly, information of the “Shri Niwas” lodging was given vide letter dated 21/04/2011 by Shop Inspector Uran, which is at Exh. 24. It shows that, the defendant is the owner of “Shri Niwas” lodging. The said lodging was registered on 04/01/1978 and registration was expired on 1999. The said registration was cancelled and entry was made in ‘C’ register. The plaintiff also obtained information regarding water supply connection in House No.420 under Right to Information Act, 2005 from Uran Municipal Council. The said information is at Exh. 25. It shows that, there was one water supply connection in the name of the Tukaram Mali. However, said water connection was discontinued.

**14.** As per provision of Section 16(1)(n) of the Maharashtra Rent Control Act, 1999, “the landlord shall be entitled to recover possession of the premises, if the court is satisfied 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.”

**15.** It is crystal clear from the letter dated 21/04/2011 Exh.24 of Shop Inspector Uran that, the defendant’s lodging was registered on 04/01/1978 and registration was expired on 1999. Thereafter, license was not renewed, and after 1999, the registration of the said lodging was cancelled. There is nothing

record to show that defendant is using the premises and she is running hotel and lodging business. Therefore, I find that, suit premises has not been used by the defendant without reasonable cause for the purpose for which it was let for a continuous period of six months immediately preceding the date of the suit. Hence, I answer point No.1 in the affirmative.

**POINT NO. 2**

16. The plaintiff claimed mesne profit from the defendant. Section 2(12) of the Code of Civil Procedure, 1908, defines "mesne profit" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits to improvements made by the person in wrongful possession. The present suit is for recovery of possession on the ground of non-user for three-four years. It means that the defendant has not received any profits from the suit premises for last three-four years before the institution of the suit. Therefore, directing an inquiry as to mesne profit under Order XX Rule 12 of the C.P.C. is not required. Hence, I answer point No.2 in the negative.

**POINT NOS. 3 AND 4**

I consider point Nos.3 and 4 together as they are interlinked with each other.

17. The defendant/appellant seeks to remand the matter for re-trial of the suit. The learned advocate for

defendant argued that, due to negligence of the advocate, party cannot be suffered. Such negligence results in grave prejudice and denial of fair trial, an opportunity may be granted in the interest of justice.

18. Order XLI Rule 23-A of CPC empowers the appellate court to remand a case:- where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23.

19. It is settled law that remand should not be ordered routinely, but only when failure of justice is evident. The record of the Trial Court proceeding shows that, the defendant appeared through her advocate on 01/11/2011. Some dates were taken for filing written statement, but it was not filed, despite sufficient opportunity. Therefore, suit was proceeded without written statement vide order dated 02/07/2012. The defendant also failed to cross-examine plaintiff's witnesses. The learned advocate for defendant relied upon *Rafiq and another V/s. Munshilal and another, reported in (1981) 2 Supreme Court Cases 788*, wherein Hon'ble Supreme Court, recalled the dismissal Order on the ground that innocent party should not suffer merely because his chosen advocate defaulted. However, in the case in hand the defendant did not apply for setting aside "No WS Order" in suit. Consequently, the Trial Court decreed the suit on merit. After, decision of the

suit, defendant challenged decree by preferring this appeal for remand of the matter on the ground that she relied upon the advice of the advocate and she is not aware of the legal provision. There is no material on record to show that the defendant exercised due diligence or made any effort to follow up the proceedings. In appeal also defendant has not made any efforts to file her written statement. Under these circumstances, with great respect the authority cited by the defendant is not helpful to her.

**20.** The necessary requirements of Rule 23-A of Order XLI CPC are that the decree is reversed in appeal and a re-trial is considered necessary. I am not arrived at the finding that decree be reversed in appeal. Hence, Order 41 Rule 23-A of the Code of Civil Procedure is not attracted. The grounds mentioned in the appeal memo are not sufficient to remand the matter. Remand is not to be ordered merely to provide a second opportunity to a negligent litigant. No exceptional circumstances are made out warranting exercise of powers under Order XLI Rule 23-A CPC. Hence, I answer point Nos.3 and 4 in the negative.

**POINT NO. 5**

**21.** In view of the affirmative finding of point No.1 the plaintiff is entitled for decree for recovery of possession on the ground of non-user of the suit premises. The impugned judgment and decree of the Ld. Trial Court is correct and proper, which requires no interference by this Court. Hence, I

answer point No. 5 in the negative. As a result, I pass following order-

<b><u>ORDER</u></b>	
1.	The appeal is dismissed.
2.	Judgment and decree dated 31/10/2013 passed by Ld. Civil Judge Junior Division, Uran, Dist. Raigad in Reg. Civil Suit No. 88/2011 is hereby confirmed.
3.	Parties to bear their own costs.
4.	Decree be drawn accordingly.
5.	Inform the Learned Trial Court accordingly.
6.	Record and proceeding be sent back to Learned Trial Court.

(Dictated and pronounced in open Court)

**Panvel.**  
**Date: 29/04/2026**

**(S. R. Chavan)**  
**District Judge-3**  
**Panvel-Raigad.**