

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.3285/2015

Brijkishore s/o Sundarlal Bhattad

..Versus..

Anilkumar s/o Bhaskarrao Walokar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 15.6.2015

Heard Shri H.R. Gadhia, the learned advocate for the petitioner.

The original defendant/tenant has filed this writ petition challenging the order passed by the learned trial Judge rejecting the application filed by the defendant under Order 11 Rule 12 of the Code of Civil Procedure.

The respondent/landlord has filed civil suit praying for decree for eviction. According to the defendant, the landlord is having several properties as is clear from the list given by him in the copy of the plaint and apart from the properties which are referred to in paragraph no.2 of the plaint, the plaintiff may have some other properties. It is submitted that the discovery of the document as sought by the

defendant is necessary for proper adjudication of the issue of entitlement of the landlord in respect of possession of the suit premises on the ground of *bona fide* requirement. It is submitted that it is almost impossible for the defendant to obtain documents from various Authorities. Relying on the proviso below Rule 12 of Order 11 of the Code of Civil Procedure it is submitted that if application (Exh. 27) filed by the petitioner is allowed, it will save time and costs. It is further submitted that application (Exh. No.27) was filed on or about 6th February, 2014 and the arguments on the application were heard on 28th April, 2014 and the order has been passed on 11th March, 2015 and, therefore, the impugned order is bad in law having been passed after a period of almost 10 and ½ months. In support of this, the learned advocate has relied on the judgment given by the Hon'ble Supreme Court in the case of *Anil Rai V/s. State of Bihar* reported in **2001(7) SCC 318**.

The learned trial Judge has considered all the relevant aspects in paragraph no.7 of the impugned order as follows :

“7] Upon going through application, it reveals that, the defendant has knowledge about properties mentioned in (vii) of para no.2 alleged to be belongs to

plaintiff and his family. On the other hand, plaintiff has not stated that he is possessing all the documents which have been asked by the defendant in this application. Considering the nature of documents which have been asked by defendant by way of this application for discovery and nature of present suit, these documents are not necessary for fair disposal of the suit or to save the costs. Apart from this, when plaintiff has not stated that he is possessing these documents and defendant is having ample opportunity to cross examining the plaintiff in respect of the properties may or may not be owned by the plaintiff, under these circumstances discovery of document on oath by the plaintiff could not be necessary for fair disposal of suit or to save the costs. When the present matter was for cross examination of the plaintiff, the defendant has moved this application only with intention to prolong the matter and not otherwise. So far as the nature of present suit i.e. of eviction and possession, the two important issues are involved in this suit and plaintiff has to prove bonafide need and the defendant has to prove the issue of comparative hardship in the event of decree of eviction is passed. As per the law relating to burden of proof, the parties who assert a fact in his pleading, the burden lies on that party to prove existence of such fact. Therefore, under these circumstances and in the light of above discussion, it appears that, the application is moved with some ulterior motive to protract the proceeding which liable to be rejected with costs. Hence, I proceed to pass the following order.

ORDER

- 1 Application Ex.27 is hereby rejected.
2. No order as to costs."

I find that there is no error of jurisdiction nor the learned trial

Judge has committed any illegality while passing the impugned order.

As far as the submission made on behalf of the petitioner that the impugned order is unsustainable as it is passed after 10 and ½ months is concerned, it cannot be accepted as per the judgment given in the case of *Anil Rai V/s. State of Bihar (cited supra)*. It was open for the petitioner to file an application for rehearing on the application (Exh. No.27). The learned advocate for the petitioner has not been able to point out anything from the above referred judgment or any other provision which lays down that the Court cannot pass order after two months or three months as submitted on behalf of the petitioner.

The learned advocate for the petitioner has relied on the judgment given in the case of *Shri Pradeep K.R. Sangodker V/s. State of Goa and the District* on 24th August, 2006. The copy of the judgment given by the learned advocate is downloaded from Indian Kanoon. It is submitted that the judgment is reported in 2006(2) Goa LR (Bom.) 343. The directions given in paragraph no.9 of the judgment are made applicable to Civil Courts in State of Goa. The learned advocate for the petitioner has not been able to point out that such directions are given to Civil Courts within the State of Maharashtra. Furthermore, the directions are given in accordance with

the observations of the Hon'ble Supreme Court in the case of *Anil Rai V/s. State of Bihar (cited supra)*. I have already recorded that the learned advocate for the petitioner has not been able to point out any provision, or any observation in the judgment given in the case of *Anil Rai V/s. State of Bihar (cited supra)* that the Court cannot pass order after two months or three months as submitted on behalf of the petitioner.

In view of the above, I see any reason to interfere with the impugned order. The petition is dismissed. In the circumstances, the parties to bear their own costs.

JUDGE