

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

Writ Petition No.4824 of 2014
(Shri Harishchandra s/o Rambharose Verma v. Shri Paresh s/o Dhirajbhai
Patel)

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

Shri S.P. Kshirsagar, Advocate for Petitioner.

Coram : R.K. Deshpande, J.

Dated : 9th February, 2015

The application under Order VII, Rule 11 filed in Regular Civil Suit No.89 of 2008 by the defendant-tenant has been rejected by the Trial Court on 19-7-2014. Hence, this petition.

The contention of Shri Kshirsagar, the learned counsel for the petitioner-tenant, is that during the pendency of the suit, the written statement has been amended and it has been brought on record the fact that the respondent-landlord has let out the shop in his possession to one Dhanlaxmi Traders and, therefore, his need does not survive. Consequently, the question of comparative hardship also does not arise.

The plaint can be rejected under Order VII, Rule 11(a) of the Civil Procedure Code for failure to plead a single material fact. I have gone through the copy of the plaint and I do not find any substance in the contention raised by the learned counsel for the petitioner-tenant that the material facts are absent in the plaint. It is the submission of the learned counsel for the petitioner-tenant

that after the amendment was made in the written statement bringing on record the event of letting out the shop in possession of the respondent-landlord, it was necessary for the respondent-landlord/plaintiff to have amended his plaint denying such fact. In the absence of such amendment, the plaint fails to disclose the cause of action. The contention cannot be accepted, for the reason that it is the petitioner-tenant/defendant, who has come forward with the case of letting out the shop block during the pendency of the suit and, therefore, it is a matter of evidence to be led by the parties to establish this fact. In such a situation, even a preliminary issue, as contemplated under sub-rule (2) of Rule 2 of Order XIV of the Civil Procedure Code cannot be framed.

The petition being frivolous, is dismissed.

Judge.

Lanjewar