

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

MISC. CIVIL APPLICATION NO. 476 OF 2015
AND
CIVIL APPLICATION (CAW) NO. 986 OF 2015
IN
WRIT PETITION NO.5096 OF 2003 (D).

(CHHAPOLIYA TRADERS OIL AND PULSE IND. .VS..THE RENT CONTROLLER, AKOT & ANR.)

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.
DATED : JUNE 17, 2015.

Heard Mr.A.S.Mardikar, the learned Senior Advocate assisted by Mr. S.G.Joshi, the learned advocate for the applicant.

The petitioner/ tenant has filed this application seeking review of the judgment passed by this Court in the writ petition. The other application is for seeking permission to amend the review application.

It is submitted by the learned Senior Advocate that this Court, while rejecting the submissions made on behalf of the petitioner that the evidence on record has not been properly considered by the subordinate authorities, has observed that no such ground was raised in the petition and even memo of appeal filed before the appellate Authority has not been filed to show that such a ground was raised before the appellate Authority. Along with review application a copy of memo of appeal, filed before the appellate Authority, has also been placed on record and it is pointed out by the

learned Senior Advocate that the ground was raised in the memo of appeal. It is pointed out that ground Nos. 8, 10 and 12 show that such challenge was raised before the appellate Authority.

The submission as made on behalf of the petitioner is misdirected. The observations in paragraph 7 of the judgment passed by this Court are in the context of the submissions which were made on behalf of the petitioner, as recorded in paragraph 6 of the judgment. It was submitted on behalf of the petitioner that the admissions given by the witnesses examined on behalf of the respondent No.2-landlord in the cross-examination show that the alleged need of the respondent No.2 landlord was neither genuine nor *bona fide* and the subordinate Authorities failed to consider those admissions. The learned Senior Advocate has not been able to point out that such ground was raised either in the memo of appeal or in the memo of petition.

It is further submitted that the respondent No.2-landlord sought permission to terminate the tenancy of the petitioner/ tenant in respect of the land admeasuring 13665 sq.ft. However, the House Rent Controller has granted permission in respect of the land admeasuring 20989 sq.ft. and the appellate Authority failed to consider this aspect and the same error has crept in the judgment passed by this Court. However, the learned Senior Advocate has not been able to point out that such challenge was raised either before the appellate Authority or in the writ petition. It is submitted that the appellate Authority has committed serious error by not considering that the House Rent Controller has acted beyond his jurisdiction while granting permission to the respondent

No.2-landlord to terminate the tenancy in respect of the land admeasuring about 20989 sq.ft. when the respondent No.2 -landlord had himself sought permission in respect of the land admeasuring 13665 sq.ft. It is submitted that the subordinate authorities have committed jurisdictional error and though this ground was not raised in the memo of petition, it can be considered by this Court while exercising the review jurisdiction.

The submissions made on behalf of the petitioner cannot be accepted. It cannot be said that there is an error apparent on the face of the record which necessitates the review of the judgment. The petitioner cannot be permitted to rake up the factual aspects in respect of which there had been no challenge either at the appellate stage or in the writ petition.

In view of above, both the applications are dismissed. In the circumstances, there will be no costs.

JUDGE

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