

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

Writ Petition No.6403 of 2013

(Shri Bhaiyyalal s/o Paparam Ahir, since deceased, through his legal heirs
Suraj s/o Bhaiyyalal Ahir and others v. Shri Pandhari s/o Natthuji Khade and
another)

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders
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None for Petitioners.

Shri H.S. Chitaley, Advocate, holding for Shri A.A. Naik,
Advocate for Respondents.

Coram : R.K. Deshpande, J.

Dated : 24th March, 2015

1. In Regular Civil Suit No.272 of 2006, the Small Causes Court, Nagpur, passed a decree for eviction and possession against the original defendant-tenant on 21-2-2012. This decree is confirmed in Regular Civil Appeal No.657 of 2012 by the learned District Judge-3, Nagpur, by his judgment and order dated 2-9-2013. Hence, the petitioners, who are the legal representatives of the original defendant-tenant, are before this Court in this petition against the concurrent findings of fact recorded by both the Courts below holding that the relationship of “landlord and tenant” between the plaintiffs and defendant is established. The plaintiffs have established bona fide requirement in respect of the suit property and the defendant is held to be defaulter in payment of rent.

2. Initially, the notice was issued in the matter on 10-12-2013. On 9-1-2014, this Court passed an order directing the parties to maintain status quo. The order was thereafter

continued. On 1-9-2014, both the parties jointly made the request for grant of time of three weeks to explore the possibility of settlement. Thereafter, on 29-10-2014, this Court passed an order as under :

“ Put up on 5th November, 2014, by consent of the learned counsels appearing for the parties, for final disposal.

If any of the counsel seeks an adjournment, it shall be subject to costs of Rs.2000/-.”

On 5-11-2014, the following order was passed :

“ Shri Samel, the learned counsel appearing for the petitioners seeks an adjournment by a further period of two weeks in the matter.

Hence, put up this matter on 19.11.2014.

The costs of Rs.2000/- to be paid to the High Court Bar Association Library, Nagpur within a period of one week.

If the further adjournment is sought, the same shall be subject to the costs of Rs.3000/-.”

Thereafter, on 19-11-2014, the order was passed as under :

“ Shri Shukla, the learned counsel, appears for the petitioners and submits that he is filing vakalatnama. He further submits that the costs of Rs.2,000/- has been paid to the High Court Bar Association Library as per the earlier order dated 29-10-2014.

In view of the order dated 5-11-2014, the petitioners are required to pay the further costs of Rs.3,000/-, which should be paid to the High Court Bar Association Library within a period of one week from today.

Put up this matter on 3-12-2014, as per the convenience of the learned counsels for the parties.

If any of the counsels seeks an adjournment on the next date, it shall be subject to the costs of Rs.5,000/-.”

On 3-12-2014, the matter was again adjourned on the request of the learned counsel for the petitioners.

3. Today, the matter was called out in earlier session when the counsel for the petitioners remained absent. Even during the second session, no one appears for the petitioners.

4. Heard Shri H.S. Chitley, the learned counsel appearing for the respondents.

5. Both the Courts have concurrently held that there existed the relationship of “landlord and tenant” between the parties and hence the Court of Small Causes has jurisdiction to entertain, try and decide the dispute regarding eviction and possession of the suit property from the defendant-tenant. The Trial Court placed reliance upon the decree passed in Regular Civil Suit No.1933 of 1981. It has been held that the defendant-tenant has accepted in the written statement the relationship of “landlord and tenant”. Not only that, but the Appellate Court has held that the defendant-tenant accepted the plaintiffs as his landlords and started paying the rent of Rs.60/- per month to the plaintiffs. The defendant-tenant paid the rent to the plaintiff-landlords from 1975 to April 1978 and thereafter he stopped it. The plaintiffs claimed to be the owners of the suit property on the basis of the registered sale-deed dated 20-3-1975 and the plea raised by the defendant-tenant about the ownership of the suit property on the basis of the Will from his grandfather, has been rejected. Once the relationship of “landlord and tenant” is established between the plaintiffs and defendant, the Court of Small Causes gets

jurisdiction to entertain, try and decide the dispute regarding eviction and recovery of possession of the suit property. The findings of fact recorded by the Trial Court on this aspect being based upon the evidence available on record, no interference is called for in those findings.

6. So far as bona fide requirement is concerned, the Courts below have concurrently held that the landlords have established bona fide requirement in respect of the suit property. The Appellate Court has recorded the findings in para 28 of its judgment in respect of bona fide requirement as under :

“28. The plaintiffs also examined Pravin Khade, son of plaintiff namely Pandhari Khade. It has come in his evidence that presently he is residing at village Kinhi about 20 km. Away from Nagpur. He further deposed that his family is residing at first floor, whereas his uncle is residing on the ground floor. He wants to do the business of daily needs in the suit premises. He is married having son Priyanshu aged about 8 years. He wants to give the education to his son Priyanshu in English school at Nagpur. He supported the case of the plaintiffs. He has been cross-examined by the defendant and the bonafide need is disputed. However, on going through his cross-examination, it is found that nothing has been brought by which his evidence can be disbelieved because he is married, he has one son Priyanshu, he wants to give education to his son at Nagpur in English College. Only because he did not know the names of the School in which he wants to give the education to his son, for that reason only his bonafide need cannot be disputed. I have gone through the evidence of appellant. He has shown the ignorance about the bonafide need of the plaintiffs. It is found from his cross-examination that he has not specifically

denied the bonafide need of the plaintiffs. He has shown ignorance about the facts which are put to him by way of questions in his cross-examination. The defendant has not specifically denied in his cross-examination the bonafide need of the plaintiffs.”

The Appellate Court has held that bona fide requirement has not at all been seriously disputed and no case of comparative hardship is made out by the defendant-tenant. It has also held that there is no serious dispute raised about bona fide requirement, but the dispute was only in respect of ownership of the suit property.

7. In view of the aforesaid findings, which are based upon the evidence available on record, a possible view is taken by the Courts below, which does not call for interference by this Court.

8. The petition is dismissed with the costs of Rs.5,000/- to be paid to the respondent-landlords.

Judge.

Lanjewar