

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

Writ Petition No.3302 of 2014

(The Maharashtra State Co-operative Consumer Federation Ltd., through its
Divisional Manager, Somalwada, Nagpur v. The Vidharbha Premier
Co-operative Housing Society Limited, through its General Manager,
Gandhisagar, Nagpur)

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

Shri B.B. Mehadia, Advocate for Petitioner.

Shri N.S. Deshpande and Shri Atul Pathak, Advocates for
Respondent.

Coram : R.K. Deshpande, J.

Date : 22nd February, 2016

An application under Order VII, Rule 11(d) of the Code of Civil Procedure filed in Special Civil Suit No.388 of 2010 for eviction and possession under Sections 15 and 16(1)(g)(n) of the Maharashtra Rent Control Act, 1999 has been dismissed by the Trial Court. The decision has been confirmed in appeal. Hence, this petition.

The contention raised is that earlier a composite suit was filed for eviction of a tenant and removal of encroachment in the Small Causes Court at Nagpur, registered as Regular Civil Suit No.5 of 2009. On 1-1-2010, the said suit was disposed of by an order as under :

“1/ Application is allowed.

2/ Complaint is returned to the plaintiff for its presentation before the Appropriate Court.

3/ Plaintiff is at liberty to file a suit in respect of tenement of the portion which was leased out under Lease Agreement.”

In view of the aforesaid order, the present Regular Civil Suit No.388 of 2010 has been preferred seeking decree for eviction of a tenant only. The suit does not claim the relief of removal of encroachment. In these facts and circumstances of the case, it is not possible to accept the argument that the procedure, as prescribed under Order VII, Rule 10(a) of the Code of Civil Procedure was required to be followed. Once it is held that the suit, as framed, was not maintainable, it was open for the plaintiff to file a separate suit in appropriate forum, and such liberty was granted by the Small Causes Court on 1-10-2010, which is the order reproduced above. No illegality is pointed out.

The petition is dismissed.

Judge.

Lanjewar