

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

WRIT PETITION NO.2539 OF 2015

(HARIDAS GUNWANTRAO MOHOKAR...VS.. MAHESHKUMAR BANSILAL VYAS.)

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

Court's or Judge's orders

Shri A.M.Ghare, Advocate for Petitioner.
Shri S.S.Alaspurkar, Advocate for Respondent.

CORAM : Z.A.HAQ, J.
DATED : NOVEMBER 16, 2017.

Heard.

2. The petitioner/tenant has challenged the judgment and decree passed by the subordinate Courts concurrently upholding the claim of the respondent/ landlord for decree for eviction, possession and other ancillary reliefs. The landlord claimed that the possession of the suit shop occupied by the petitioner/tenant is required to start business of his son Chetan. The subordinate Courts have concurrently upheld the claim of the landlord.

3. The contention of the petitioner/ tenant is that one shop earlier occupied by a tenant and run as "My Shop" and another shop earlier occupied by "Ghumatkar Tailor" came in possession of the landlord and if at all the need as pleaded by the landlord was genuine he could have settled Chetan by starting business in those two shops. Further contention is that two more shops admeasuring more than 700 sq.ft. situated at the far end of the shop "Vishal Shoes Collection" are vacant and in possession of the landlord.

According to the tenant one more shop was in possession of the landlord, and during the pendency of the civil suit the landlord himself has started a shop in it by name "Prince Shoes".

The learned advocate for the petitioner submitted that the subordinate Courts have not considered the evidence brought on record by the tenant which shows that the need of the landlord as pleaded is not genuine.

4. The learned advocate for the respondent landlord has supported the impugned judgment.

5. I find that consideration about availability of the shop where business in the name "My Shop" was being run and another shop where business of 'Ghumatkar Tailor' was conducted are found in paragraph Nos.13 and 14 of the judgment passed by the trial Court. The considerations in these two paras are insufficient to uphold the claim of the landlord. The tenant had raised this point before the District Court and this is reflected from the grounds formulated in the memo of appeal. The learned District Judge has not adverted to the challenges raised by the tenant about availability of these two shops with the landlord. However, in connected matter i.e. in Writ Petition No. 5007 of 2013 filed by another adjoining tenant Kashiram Deviram Killekar to challenge the judgment and decree passed against him and in favour of the landlord (respondent in the present writ petition), this Court has delivered the judgment on 15th October, 2013 in which it is recorded that the shop which was earlier occupied by Ghumatkar Tailor is not a shop but Ghumatkar Tailor conducted his business in a passage of 5' x 10'. It is further recorded that another shop which was earlier occupied by

tenant-Mangaram had fallen vacant and is now occupied by Rohit, another son of Maheshkumar Bansilal Vyas.

In view of the findings recorded by this Court in the judgment given in Writ Petition No. 5007 of 2013, I am not inclined to set aside the judgment and decree passed by the subordinate Courts, though the contentions of the tenant regarding availability of shop earlier occupied by 'Ghumatkar Tailor' and another shop where business was conducted in the name of "My Shop" are not exhaustively dealt with by the trial Court and are not considered by the District Court.

6. The submission made on behalf of the petitioner / tenant that two other shops at the far end of shop named "Vishal Shoes Collection" are available with the landlord and business of Chetan can be setup in those shops also cannot be considered as these pleadings are brought on record for the first time before this Court by the affidavit dated 13th October, 2016. It is not stated by the tenant that since when, these two shops are vacant and available with the landlord.

The judgment and decree passed by the subordinate Courts after considering the evidence on record cannot be interfered with on the basis of the vague averments that two shops are available with the landlord where business of his son can be set up.

Moreover, the subordinate Courts have rightly considered that the landlord is best judge and the tenant cannot dictate and impose his choice as to where the landlord should set up his business. The subordinate Courts have also dealt with the point of comparative hardship.

7. I see no reason to interfere with the judgment and decree. The writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

8. At this stage, the learned advocate for the petitioner/ tenant requested that the interim order which operated during the pendency of the petition be continued for twelve weeks to enable the petitioner to take appropriate steps in the matter. It is further submitted that if the petitioner fails to get any relief in the matter, vacant possession of the suit premises will be handed over to the landlord within 8 weeks from the date of disposal of the petition for special leave to appeal which the petitioner intends to file.

The request is opposed by the learned advocate for the respondent.

The interim order, which operated during the pendency of the writ petition shall continue to operate for eight weeks. It is further directed that the petitioner will not part with the possession of the suit premises in favour of the other person except the landlord.

CIVIL APPLICATION (CAW) NO. 1398/2015

In view of dismissal of the writ petition, the application seeking amendment of the petition does not survive, hence, it is disposed of.

JUDGE