

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

WRIT PETITION NO.4218 OF 2015

(DR. SITARAM GIRDHARILAL AGRAWAL....VS. RATANLAL GIRDHARILAL AGRAWAL & 5 OTH)

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

Court's or Judge's orders

Shri V.R.Choudhari, Advocate for Petitioner.

CORAM : Z.A.HAQ, J.

DATED : NOVEMBER 17, 2017.

None appeared for the respondent, though served. Heard Shri V.R. Choudhari, advocate for the petitioner.

2. The petitioner has filed civil suit praying for decree for permanent injunction against the defendants directing the defendant Nos. 2, 3, 4 and 5 to pay rent of the suit premises occupied by them regularly. The petitioner / plaintiff prayed for decree for possession of 890 sq.ft. out of the suit house. At interlocutory stage the matter had come up to this Court earlier vide Appeal from Order No. 60 of 1986 which was decided on 3rd December, 1986. The relevant directions are found in paragraph No.5 of the order dated 3rd December, 1986 and are as follows :

“5. Defendant No.1 is hereby directed to recover the rent from the defendants Nos. 2 to 5 every month and after recovering the rent retain the rent for two months in each year for payment of taxes and repairs and for the rent of rest of ten months, shall purchase National Savings Certificate on 10th of every succeeding month until further orders and shall deposit the said certificates

in the court subject to the result of the suit. The National Savings Certificates shall be purchased in the name of the appellant and the amount shall be subjected to the orders of the court at the time of disposal of the suit finally. This order shall be effective from 01/10/1986. No order as to costs.”

According to the petitioner, the defendant Nos. 2 and 3 were occupying first floor of the suit house and were paying rent to defendant No.1, who invested the amount as per the order passed by this Court in Appeal from Order No. 60 of 1986 on 3rd December, 1986, however, the plaintiff came to know that the defendant Nos. 2 and 3 intended to vacate the premises and therefore, he issued notice dated 26th February, 2013 calling upon the defendant Nos. 2 and 3 to deposit keys of the premises in the Court. The petitioner/plaintiff also filed an application under Order 39 Rule 11 of the Code of Civil Procedure to which the defendant No.1 filed reply and admitted that the defendant Nos. 2 and 3 had vacated the premises occupied by them. In this background, the plaintiff filed an application (Exh.348) praying that the defendant No.1 be directed to deposit keys of the first floor premises with the Court. This application is dismissed by the impugned order.

3. The learned advocate for the petitioners has submitted that the trial Court has committed an error by not considering the submission made by the plaintiff before it that the suit premises can fetch rent of at least Rs.15,000/- per month and if the keys of the premises are deposited with the Court, the premises can be leased out. I find that the learned trial Judge has failed to consider the submission of the petitioner/plaintiff on this point. Without expressing any

opinion, *prima-facie*, it appears that the request of the plaintiff is reasonable and cannot be said to be unjustified, as keeping the first floor of the suit premises locked will not be beneficial to any of the parties.

4. In the facts of the case, following order is passed:

- i) The impugned order is set aside.
- ii) The application (Exh.348) filed by the plaintiff is restored.
- iii) The plaintiff is granted liberty to file appropriate application with a request for utilization of the premises on first floor for benefit of the parties.
- iv) If such application is filed, it be considered along with the application Exh.348.

The writ petition is **disposed** in the above terms.
In the circumstances, the parties to bear their own costs.

JUDGE