

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

MISC. CIVIL APPLICATION NO.1454 OF 2017 (R)

IN

WRIT PETITION NO.1746 OF 2015(D)

(VITTHAL GOKULDAS DAYAMA...VS.. VILAS LAXMAN GHATOLE)

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

Court's or Judge's orders

Shri S.P.Kshirsagar, Advocate for Applicant/Org. Petitioner.

CORAM : Z.A.HAQ, J.

DATED : DECEMBER 13, 2017.

Heard.

2. The Judgment Debtor (tenant) seeks review of the order passed by this Court in Writ Petition No. 1746 of 2015 on 31st October, 2017 by which the writ petition filed by the tenant is dismissed and the judgment and decree passed by the subordinate Courts is upheld.

The submission on behalf of the applicant/ tenant is that admittedly the present applicant and his brother Domadas earlier occupied the shop premises admeasuring 150 sq.ft. as tenants, that the landlord had filed Regular Civil Suit No.604 of 1991 against the present applicant and his brother-Domadas praying for decree for eviction and possession and other reliefs, this suit was dismissed by the trial Court by the judgment dated 10th July, 1992, the landlord had filed Regular Civil Appeal No.392 of 1992 which was allowed by the District Judge by judgment dated 1st January, 1993 and the defendants in that civil suit (i.e. present applicant and his brother-Domadas) were directed to

handover possession of the suit premises to the plaintiff. Domadas had entered into a compromise with the plaintiff and Compromise Pursis dated 24th August, 1994 was filed in execution proceedings i.e. Regular Darkhast No.177 of 1993 and simultaneously, a pursis dated 26th August, 1994 was also filed in Regular Civil Appeal No.392 of 1992. The compromise pursis filed before the executing Court shows that Domadas agreed to handover possession of the half portion of the premises and it is not disputed that Domadas handed over possession of the half portion of the premises i.e. the portion which was in possession of Domadas. The present applicant continued to be in possession of the remaining half portion of the premises.

The plaintiff filed Regular Civil Suit No. 586 of 2003 praying for decree for eviction, possession and other reliefs which is decreed and the decree is maintained by this Court by the judgment dated 31st October, 2017.

The submission on behalf of the applicant is that it is a case of termination of partial tenancy and this is not permissible. To support the submission, reliance is placed on the following judgments:

- i) The judgment given by the Hon'ble Supreme Court in the case of *Habibunnisa Begum Vs. G. Doraikannu Chettiar*, reported in **(2000) 1 SCC 74** and
- ii) The judgment given by the Hon'ble Supreme Court in the case of *T.S.Subramanian Vs. Andhra Bank Ltd.*, reported in 1989 Supp.(2) **SCC 252.**

3. It is well settled that there cannot be termination of partial tenancy. However, the present case is not a case of termination of partial tenancy. Domadas (brother of the applicant/tenant) handed over possession of the portion of the premises which was in possession of Domadas to the plaintiff/ landlord in 1994. The present applicant continued as tenant of the plaintiff/ landlord in respect of the remaining half portion of the premises from 1994 and the plaintiff terminated the tenancy of the present applicant in 2003.

In the facts of the present case, the judgments relied upon by the learned advocate for the applicant/ Judgment Debtor are not of any assistance to him.

4. I do not find any error apparent on the face of the record which necessitates exercise of review jurisdiction by this Court. The Miscellaneous Civil Application is **dismissed**. No costs.

JUDGE