

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR
Writ Petition No. 4008 of 2017
[C. G. Shashidharan V. Habibkha Sherkha Pathan]

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

Court's or Judge's orders

Mr. N. G. Jetha, Adv., for the petitioner.
Mr. P. A. Markandeywar, Adv., for respondent.

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CORAM : A. S. CHANDURKAR, J.

DATE : 19th March, 2018

The petitioner who is occupying a block of five rooms from Municipal House 1118 at Umrer has challenged the decree for eviction that is passed by the first appellate Court in the suit for eviction filed by the original plaintiff.

The plaintiff - Itwara Masjid Committee through its President sought eviction of the petitioner herein on the ground that he was in arrears of rent which was payable at the rate of Rs. 250/- per month. The arrears were for the period from 1st October, 1997 onwards. Another ground set up was that the premises were required for starting a Madarsa and that there was no other suitable place available for said purpose. A notice

came to be issued demanding arrears of rent on 13th November, 2000 which was received by the petitioner on 15th November, 2000. The suit came to be filed thereafter.

In the Written Statement, the contents of para 1 of the plaint were admitted. It was, however, denied that the petitioner was liable to be evicted. He was not in arrears of rent nor was there any bona fide need of the plaintiff. It was also pleaded that the suit was filed by a person who was not the President of the Committee.

The plaintiff examined its President at Exh.47. The defendant did not examine himself or any witness. The trial Court recorded a finding that the defendant was in arrears of rent from 1st January, 1997. However, as the suit was not filed through a competent person, the relief of possession was not granted. The appellate Court reversed the finding of the trial Court and directed payment of arrears of rent from 12th March, 1998 by holding that the demand of arrears prior to that date was barred by limitation. It was also held that need of the plaintiff was reasonable. Being aggrieved by the decree for eviction, the same has been challenged in this Writ Petition.

Shri N. G. Jetha, learned counsel for the petitioner, submitted that suit was filed by a person who

was not competent to file the same. Though the suit was filed in the year 2001, according to the President, he was elected as such subsequently. It was submitted that the plaintiff could not claim arrears of rent which were barred by time and the claim in the suit was for such time-barred rent. The appellate Court despite finding that part of the claim was time barred decreed suit on that count. The finding as regards bona fide need is without considering the evidence on record and without discussing the same. Merely by stating that the plaintiff was in need of the premises, the finding has been recorded against the defendant. He also referred to the admission of the President in his cross-examination that rent of Rs. 7150/- had been received during pendency of the proceedings. It was, therefore, submitted that the suit was liable to be dismissed.

Shri P. A. Markandeywar, learned counsel for the respondent, supported the impugned judgments. According to him, the finding recorded by the trial Court with regard to the defendant being in arrears of rent from 1st January, 1997 was not challenged. The deposit of Rs. 7150/- was pursuant to the order passed by the trial Court under provisions of Order-XV-A of the Code of Civil Procedure, 1908. This was some time in the year 2002. As regards bona fide need, it was submitted that the plaintiff was a Trust and therefore, the rigors of Section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 [for short, "the said Act"] were not applicable. He

also submitted that the authority of the President to file the suit was not put to specific challenge. Hence, no interference was called for.

Heard the learned counsel for the parties at length and perused the impugned judgments.

In support of the suit claim, the President examined himself and relied upon resolution dated 18th February, 2000, by which he came to be appointed as President. Before the trial Court, as per order passed below Exh.87, permission was granted to place a copy of the resolution on record. Reference in this regard can be made to paragraph 12 of the judgment of the appellate Court which indicates that though this material was available on record, the same was not considered by the trial Court. It is, thus, clear that the President had due authority to file the suit.

As regards the arrears of rent, the trial Court has recorded a finding that the defendant was in arrears from 1st January, 1997. This finding was not challenged by the defendant before the appellate Court. The notice in question demanding arrears was issued on 13th November, 2000 and the only deposit of arrears is much after filing of the suit in the application moved under provisions of Order-XV-A of the Code. Thus, provisions of Section 15 (3) of the said Act are not shown to have been complied. The legal position is clear in view of the

decision of the Full Bench in **Babulal Fakirchand Agrawal Vs. Suresh Kedarnath Malpani & others** [2017 (4) Mh.L.J. 406].

As regards bona fide need, the plaintiff being a Trust was not required to prove its bona fide need. The same was only required to be reasonable. This finding has been recorded by the appellate Court in paragraph 22. This finding is also correct in view of the decision in **Bandu Ravji Nikam Vs. Acharyaratna Deshbushan Shikshan Prasark Mandal, Kollhapur** [2003 (3) Mh.L.J. 472]. The defendant did not lead any evidence, whatsoever and, therefore, there was no material on record to disbelieve the case of the plaintiff.

It is, therefore, found that the appellate Court rightly held the case of the plaintiff to be duly proved. I do not find any case made out to interfere in the writ jurisdiction. The Writ Petition is, therefore, dismissed.

The petitioner is granted three months' time to vacate the suit premises. Order accordingly.

Judge