

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.5444 OF 2019

Shrikant S/o Damodar Bhide	]	Petitioner
Vs.		
Nandkumar S/o Vodine Karyakate	]	Respondent

.....
Mr. Milind R. Deshpande, Advocate for the Petitioner.
Mr. Samir A. Kumbhakoni, Advocate for the Respondent.
.....

CORAM : R.G. KETKAR, J.

DATE : 24th JULY, 2019.

P.C.

Heard Mr. Deshpande, learned Counsel for the petitioner and Mr. Kumbhakoni, learned Counsel for the respondent.

2. This Petition takes exception to the order dated 29th August, 2018 passed by the learned District Judge-5, Solapur in Misc. Civil Appeal No.86 of 2018. By that order, the learned District Judge allowed the appeal preferred by the respondent and set aside the order dated 27th June, 2018 passed by the learned trial Judge below Exhibit 49. The learned District Judge directed the trial Court to dispose of the suit expeditiously.

3. The petitioner/plaintiff has instituted the suit for eviction against the respondent/defendant. During pendency of the suit, defendant took out application Exhibit 49 seeking injunction

restraining the plaintiff from demolishing Block No.6 in Wing 'C' of House No.142, Railway Lines, Solapur (for short 'suit property'). The learned trial Judge rejected the application. The learned District Judge allowed the appeal. In paragraph 9 of the impugned order, the submission of the plaintiff that most of the tenants have vacated the tenanted flats except the defendant is noted.

4. The Petition was heard on 11th April, 2019. Mr. Deshpande was asked to take instructions and make a statement as regards as to how many tenants are there in the building where the suit premises is situate and out of them, how many tenants have vacated the premises in their possession.

5. Upon taking instructions, Mr. Deshpande stated that there are in all 15 tenants in the building where the suit premises is situate. Out of 15 tenants, 11 tenants have handed over possession of their respective premises to the petitioner. Three tenants have entered into compromise and have agreed to hand over possession of their respective premises to the petitioner. In other words, only the respondent herein is not ready and willing to vacate the suit premises. He submitted that having regard to the condition of the building, it is eminent that the respondent herein vacates the suit premises. The learned District Judge was not justified in setting aside the trial Court's order.

6. By order dated 25th April, 2019, notice for final disposal was issued to the respondent. In pursuance thereof, Mr. Kumbhakoni has appeared for the respondent.

7. Rule. Mr. Kumbhakoni waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

8. Mr. Deshpande submitted that the petitioner is owner of property bearing C.T.S No.8369/1 admeasuring O H 10 R situate in Solapur District. On this plot, he has constructed building known as “Bhide Colony” consisting of three buildings namely Building No.A, Building No.B and Building No.C. The respondent is tenant in respect of Block No. C-6 admeasuring 225 square feet on the first floor comprising of three rooms. The respondent is also tenant of Block No.5 and 6 of B Building, 2nd floor one room each admeasuring 100 square feet.

9. Mr. Deshpande submitted that the learned trial Judge rejected the application made by the defendant. As against this, the learned District Judge has allowed the appeal preferred by the defendant. Having regard to the condition of the building as also having regard to the fact that out of 15 tenants, 11 tenants have handed over possession of the suit premises to the petitioner and three tenants have entered into compromise and have agreed to hand over possession of their respective premises to the petitioner, the learned District Judge was not justified in allowing the appeal and setting aside the trial Court's order.

10. Mr. Kumbhakoni submits that the respondent is present in the Court. He identifies the respondent. He submits that even if

the respondent/defendant is tenant in B Building consisting of two rooms on the second floor, it has no water supply.

11. Mr. Deshpande states that within two weeks from today, the petitioner will ensure that water connection is made available to the “B” Building. Mr. Kumbhakoni assures that if water connection is made available to the “B” Building within two weeks from today, the respondent will vacate and hand over possession of the suit premises to the petitioner within 4 weeks from today.

12. In view thereof, the impugned order is set aside. The petitioner shall ensure that within two weeks from today, water connection is made available to the “B” Building. Upon making available water connection to “B” Building, the respondent will shift from the suit premises to the “B” Building i.e Block No5 and 6 on the second floor within 4 weeks from today.

13. Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]