

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

WRIT PETITION NO.2987 OF 2017

(SNEHAL DINESH PATEL ..VS.. MRS. MANGALA VASANT POTFODE & 3 OTH.)

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

Court's or Judge's orders

Shri M.R.Joharapurkar, Advocate for Petitioner.
Shri S.D.Khati, Advocate for Respondent Nos. 1 to 3.

CORAM : Z.A.HAQ, J.

DATED : JUNE 13, 2019.

The petitioner(tenant) has challenged the judgment and decree passed by the subordinate Courts concurrently upholding the claim of the respondent Nos. 1 to 3 (plaintiffs) for decree for eviction and possession on the ground that the plaintiffs require the suit shop for bonafide use. The Courts have found that the plaintiffs have proved that the suit premises are required by the plaintiffs to run tuition classes.

According to the petitioner/defendant, the conclusions of the subordinate Courts are not sustainable as the relevant and material evidence on record has not been considered by them. It is pointed out that Shriram Vasant Potfode-witness No.1 of the plaintiffs admitted in cross-examination that the plaintiffs got possession of the shop adjacent to the suit shop from Jignesh (another tenant) in 2011 and that shop was in possession of the plaintiffs. It is pointed out that this witness further admitted that in the proceedings filed against Jignesh, it was pleaded that the shop occupied by him was required by the plaintiff for

running tuition classes of wife of this witness. It is pointed out that this witness admitted that after getting possession of that shop from Jignesh, the premises were being used for residential purpose. Relying on these admissions, it is submitted that need of the plaintiff is not bonafide and false case is filed against the petitioner/ tenant to evict him from the suit shop. The learned Advocate for the respondents/ plaintiffs has submitted that it is the case of the plaintiff that the shop vacated by Jignesh is being used by the plaintiff for residential purpose and the shop let-out to the present petitioner is required to start tuition classes of plaintiff No.3. I find that though the learned District Judge has not referred to the above admissions given by witness No.1 of the plaintiff, the learned District Judge has examined the matter in the light of the established principle that the landlord is the best judge of his need and the approach of the learned District Judge is in consonance with law.

The learned District Judge has also examined the issue of comparative hardship. In the impugned judgment it is recorded that the defendant No.1 has secured alternate accommodation at Rajlaxmi Square and the petitioner has not disputed this fact.

I find that the judgments passed by the subordinate Courts are in consonance with the facts of the case and evidence on record. The Courts have appreciated the material on record properly and the findings recorded by the Courts cannot be faulted with. It cannot be said that the judgments passed by the subordinate Courts suffer from any illegality or perversity or error of jurisdiction. I see no reason to interfere with the impugned judgments.

The writ petition is **dismissed** with costs quantified at Rs.Twenty Thousand.

The petitioner shall pay the amount of costs to the respondent Nos. 1 to 3/ plaintiffs and produce receipt of it on record of this petition within one month.

At this stage, the learned Advocate for the petitioner states that the interim order passed by this Court on 23rd June 2017 be continued for two months to enable the petitioner to take appropriate steps in the matter.

The learned Advocate appearing for the respondent Nos. 1 to 3 / Decree Holders has opposed the request for extension of the interim order.

Considering the findings recorded by the subordinate Courts that the defendants require the suit shop for bonafide use and that the petitioner has secured alternate accommodation, the request for extension of the interim order is rejected.

JUDGE