

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

WRIT PETITION NO.3054/2019

Shamandas S/o Khilumal Peshwani

..Vs..

Dr. Jagdish Sukhalal Jhunhunwala and others

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

Court's or Judge's orders

Shri V.K. Paliwal, Advocate for the petitioner.

CORAM : Z.A. HAQ, J.

DATED : 3.6.2019.

1. Heard.
2. This petition is by tenant to challenge the judgment and decree passed by the trial Court and maintained by the District Court, directing eviction of the petitioner / tenant from the suit premises.
3. According to the petitioner, the respondent No.1 - Dr. Jagdish Sukhalal Jhunhunwala had filed proceedings under C.P. and Berar Letting of Premises and Rent Control Order, 1949 against the petitioner seeking permission to terminate the tenancy of petitioner. According to the petitioner, these proceedings were filed through power-of-attorney holder - Ashok Purushottam Jhunhunwala. In those proceedings, permission was granted to respondent No.1 - Dr. Jagdish to terminate the tenancy of petitioner.

4. The judgment passed by the learned District Judge is challenged mainly on the ground that the appeal filed by the petitioner is decided by the learned District Judge without adverting to the application (Exh. No.24) which was filed by the petitioner under Order VI Rule 17 of the Code of Civil Procedure. According to the petitioner, non-consideration of the application (Exh. No.24) by the learned District Judge has resulted in depriving the petitioner of his valuable right of defending the matter by bringing relevant and necessary facts on record. By the application (Exh. No.24), the petitioner wanted to bring on record that Dr. Jagdish Jhunjunwala cannot claim to be owner of suit property and, therefore, the proceedings filed through power-of-attorney holder - Ashok Jhunjunwala were not maintainable.

To support the submission that the proceedings filed through power-of-attorney are not maintainable, learned Advocate for the petitioner has relied on the judgment given by the Hon'ble Supreme Court in the case of *Kardela Parthsaradhi V/s. Gangula Ramanamma (dead) through Legal representatives and others* reported in **(2014) 15 SCC 789** and the judgment given by this Court in the case of *Olga Rodrigues & Ors. V/s. Christopher Pinto & Ors.* reported in **2018 (1) ALL MR 520**.

5. After hearing the learned Advocate for the petitioner and examining the facts of the case, I find that non-consideration of the application (Exh. No.24) by the

learned District Judge has not resulted in any prejudice to the petitioner and in the facts of the present case, it can be said to be a mere irregularity and not an illegality which can have the effect of vitiating the impugned judgment. By the proposed amendment, the petitioner wanted to bring on record the pleadings that Dr. Jagdish Jhunjhunwala cannot claim to be owner of the suit property. The learned District Judge has recorded in paragraph No.14 of the judgment passed by him, that this issue is already decided in the earlier round of proceedings and is confirmed by this Court. It is recorded that the finding on the point of relationship of landlord and tenant between the petitioner and respondent No.1 is confirmed by this Court. For reasons best known to the petitioner, the copies of the order passed in the proceedings under the Rent Control Order, 1949 are not placed on record and not shown at the time of hearing also. There is no reason to find any fault with the finding recorded by the learned District Judge that the point of relationship between the parties is already decided in the earlier round of litigation. In these facts, now, it is not open for the petitioner to agitate the same issue again. Learned District Judge has rightly relied on the provisions of Section 11 of the Code of Civil Procedure to repel this submission on behalf of the petitioner.

6. On merits of the matter, I find that permission was granted to respondent No.1 - Dr. Jagdish Jhunjhunwala to terminate the tenancy of the petitioner

as per the provisions of Rent Control Order, 1949 and then civil suit came to be filed which is decreed by the judgment passed by the trial Court and the decree is maintained by the District Judge. The petitioner has not been able to point out any illegality in respect of notice issued by the respondent No.1 under Section 106 of the Transfer of Property Act. Learned District Judge has rightly dealt with the matter. The judgment and decree passed by the subordinate Courts do not suffer from any illegality or perversity or error of jurisdiction, which necessitates interference by this Court in the extra-ordinary jurisdiction. I see no reason to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE