

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

WRIT PETITION NO.4452 OF 2019

(SAU. SUSHILA SUNDERLAL DAMANI & OTH...VS.. ABDUL RAHIM ABDUL AZIZ.)

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

Court's or Judge's orders

Shri A.D.Bhate, Advocate for Petitioners.
Shri A.V.Bhide, Advocate for Respondent.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 29, 2019.

Heard.

The civil suit filed by the respondent(landlord) seeking decree for eviction of the petitioners(tenants) on the ground that the landlord requires the suit premises for bonafide occupation is decreed by the trial Court. The petitioners(tenants) have challenged the judgment and decree passed by the trial Court by filing appeal which is pending. In this appeal, the petitioners had filed an application under Order VI Rule 17 of the Code of Civil Procedure seeking permission to amend the written statement to bring on record certain subsequent events. This application is dismissed by the impugned order.

According to the petitioners, in the plaint the respondent(landlord) pleaded that he was working as an employee in the establishment of his father and the suit premises are required by him to start his own business. However, certain events took place during pendency of the appeal before the District Court and when landlord issued notice dated 13th June 2018 in which the landlord is referred himself `as businessman. By the proposed amendment, the

petitioners seek to bring on record pleadings relying on the notice in which the landlord has referred himself as businessman and according to the petitioners, this fact is relevant for deciding the issue of bonafide requirement of the suit premises by the landlord. According to the petitioners, the pleadings relying on the notice will assist the Court in adjudicating the issue properly. It is argued that the bonafide requirement of the suit premises by the landlord must exist on the date of action and must subsist till the final decree or order for eviction is made. To support the submission, reliance is placed on the judgments given by the Hon'ble Supreme Court in the case of *Hasmat Rai and another vs. Raghunath Prasad*, reported in **AIR 1981 SC 1711** and in the case of *M/s. Variety Emporium vs. V.R.M. Mohd. Ibrahim Naina*, reported in **AIR 1985 SC 207**.

The learned Advocate for the respondent/landlord has supported the impugned order contending that filing of the application by the petitioners is nothing but calculated act to protract the matter which they have successfully protracted for 12 years. It is submitted that the proposed amendment is not necessary for adjudication of the issues which fall for consideration by the Court.

The learned District Judge has rejected the application filed by the petitioners observing that the amendment relating to subsequent events cannot be permitted to be brought on record. The reason given by the learned District Judge does not appear to be proper. However, on going through the facts of the case and examining the controversy, I find that the proposed amendment is not necessary for adjudicating the issues which

arise for consideration in the appeal before the District Court. A stray reference in some notice does not give any cause to the petitioners to seek amendment to the written statement, especially when the defendants have not been able to point out that the pleadings to the effect that the respondent/ landlord is already conducting his own business are found in the written statement filed before the trial Court. Hence, it cannot be said that the learned District Judge has committed any error by dismissing the application filed by the petitioners.

Therefore, the petition is **dismissed**. In the circumstances, the parties to bear their own costs.

As the appeal is of 2010, the learned District Judge is directed to decide the appeal till 13th November 2019.

JUDGE

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