

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

Writ Petition No.5897 of 2018
(Vishnu Pundlik Anwane .vs. Santosh Kachrumal Agrawal)

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

Court's or Judge's orders.

Mr. V.D. Muley, Advocate for Petitioner.
Mr. A.M. Ghare, Advocate for Respondent.

CORAM : Manish Pitale, J.
DATED : February 5, 2019.

This is a writ petition filed by the original defendant-tenant in the suit premises which is a shop in which the petitioner has been running tailoring business and the two Courts below have concurrently allowed the suit for eviction filed by the respondent-original plaintiff/landlord. The respondent filed suit for eviction, possession and recovery of rent under the provisions of the Maharashtra Rent Control Act, 1999 on the ground of bona fide need and arrears of rent. The said suit was resisted by the petitioner on various grounds. The Small Causes Court, Nagpur (trial Court) took into consideration the pleadings of the parties and the evidence led by them and by judgment and order dated 4.08.2016 granted decree in favour of the respondent. The trial Court found that the respondent had been able to prove bona fide need and that, therefore, case for grant of decree under Section 16(1)(g) of the aforesaid Act was made out. On the question of comparative hardship, the trial Court found that the petitioner had a house wherein he could very well continue his business

of tailoring and that the respondent had been able to prove that even on the said ground of comparative hardship, he had a strong case in his favour. The other issue raised on behalf of the petitioner was that since the shop in question was located in a slum area, as declared under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971, the suit filed by the respondent without permission of the competent authority was liable to be rejected. This issue raised on behalf of the petitioner was also rejected by the trial Court as it found that the petitioner had failed to prove that the suit shop was indeed covered under the slum area.

2. Aggrieved by the said decree passed by the trial Court, the petitioner filed an appeal before the Court of District Judge, Nagpur (appellate Court). During the pendency of the appeal, the petitioner filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908, marked Exh.21, seeking to place on record certain documents in support of his contention that the suit shop was indeed located in a slum area and that in the absence of permission from the competent authority under the Act of 1971, the suit was not maintainable. The said application remained pending. The appellate Court heard final arguments and judgment was reserved. Thereafter, the petitioner filed another application, styled as an application for permission to file original documents on record, which was marked as Exh.27. Along with the said application, the petitioner annexed certain documents, including a

letter issued to him by the Slum Department, allegedly certifying that the shop in question was located in slum area and a map was also sought to be placed on record.

3. By the impugned judgment and order dated 30.06.2018, the appellate Court dismissed the appeal, agreeing with the findings of the trial Court on all issues, including the issue pertaining to location of the suit shop in a slum area. In the impugned judgment and order, the appellate Court took note of application at Exh.21 filed under Order 41 Rule 27 of the C.P.C. The prayer made in the said application was allowed and accordingly documents annexed with the said application i.e. slum notification dated 12.09.1991 and a map of the area in question were marked as Exh.30. The appellate Court found that even if the said documents were taken into consideration, the petitioner had failed to demonstrate that the suit shop was indeed covered in slum area. The appellate Court took into consideration the map as well as the notification and rendered findings of fact. On this basis, the appeal filed by the petitioner was dismissed.

4. Aggrieved by the same, the petitioner has filed the present writ petition wherein Mr. V.D. Muley, learned counsel for the petitioner, has placed emphasis on certain documents brought on record before the appellate Court, in order to substantiate the claim of the petitioner that the suit shop was indeed located in the slum area. The learned counsel vehemently submitted that the appellate Court completely ignored application

at Exh.27, which had been filed after arguments were heard and judgment was reserved by the appellate Court. It was submitted that there were documents filed along with the said application which clinchingly proved the fact that the suit shop was located in a slum area and that , therefore, the appellate Court erred in dismissing the appeal and confirming the decree passed by the trial Court. It was submitted that the findings rendered on the issues of bona fide need and comparative hardship were also erroneous because the respondent-landlord was admittedly an old aged person and the stated need of opening a hotel in the suit premises, was clearly not bona fide and that, therefore, the decree passed against the petitioner deserved to be set aside.

5. On the other hand, Mr. A.M. Ghare, learned counsel for the respondent, submitted that the petitioner had failed to demonstrate as to under which provision was the application at Exh.27 filed by the petitioner. The application filed under Order 41 Rule 27 marked as Exh.21 was indeed taken into consideration by the appellate Court and upon allowing the same, the appellate Court took into consideration the documents filed along with the said application and yet came to a considered conclusion that the petitioner had failed to prove that the suit shop was located in slum area. It was submitted that the application filed thereafter on behalf of the petitioner styled as application for permission to file original documents on record, was not filed under any specific provision of the C.P.C. and it was

nothing but another attempt on the part of the petitioner-tenant to some how keep the litigation pending and to remain in possession of the suit shop. It was further submitted that even if it was found that there was some minor irregularity in the manner in which the appellate Court had proceeded with the matter, in the face of the material that had come on record filed by the petitioner and taken into consideration by the Appellate Court, there was no substance in the contention raised on behalf of the petitioner that the suit shop was covered in slum area. On the question of bona fide need and comparative hardship, the learned counsel supported the concurrent findings rendered by the Courts below and on that basis he submitted that the writ petition deserved to be dismissed.

6. Heard counsel for the parties and perused the record.

7. The main contention raised on behalf of the petitioner was that the appellate Court committed serious error in failing to take into consideration the documents annexed with the application at Exh.27 as the said documents, particularly the letter dated 21.02.2018 issued by the Slum Department, convincingly proved that the suit shop was indeed located in slum area and that, therefore, the very suit for eviction filed by the respondent was not maintainable. The perusal of the record shows that the petitioner had raised the aforesaid ground of the suit

shop being located in a slum area before the trial Court itself. The petitioner failed to support the said contention raised by him by placing on record any convincing evidence or material. Accordingly, the trial Court rejected the said contention. Before the appellate Court, application under Order 41 Rule 27 of the C.P.C. was moved on behalf of the petitioner along with two documents. These were slum notification dated 12.09.1991 and a map of the area wherein the suit shop was located. The said application was allowed by the trial Court and the documents annexed therewith were marked as Exh.30. A perusal of the said notification shows that the four boundaries of the slum area of the relevant portion shown in the map were clearly stated in the notification dated 12.09.1991. The said four boundaries indicated that the slum area had on its western boundary Jagnath Road. The said boundaries specifically stated in the aforesaid notification when read with the map placed on record on behalf of the petitioner himself, clearly demonstrated that the suit shop would not be covered under the slum area so identified under the notification. This is because, admittedly, the suit shop is located towards the western side of Jagnath Road and, therefore, outside the four boundaries of the slum area, as identified in the notification placed on record by the petitioner himself. This aspect has been specifically referred to and discussed in paragraph 14 of the impugned judgment and order passed by the Appellate Court. In fact, in paragraph 15, the Appellate Court has categorically found that even as per the notification at Exh.30 placed

on record by the petitioner, there was no evidence to show that the suit shop fell within the notified slum area under the aforesaid Act of 1971.

8. In this situation, the learned counsel for the petitioner placed emphasis on application at Exh.27 which was styled as an application for permission to file original documents on record. It is not clear as to under what provision the said application was filed on behalf of the petitioner. A perusal of the said application shows that there is a reference made to the application at Exh.21 filed under Order 41 Rule 27 of the C.P.C. by the petitioner and it has also been stated in paragraph 1 of the said application that after appellate Court had heard parties and it was pleased to reserve its order that the petitioner had been able to obtain certain documents annexed with the said application at Exh.27, which according to the petitioner, supported his case of the suit shop being located in a slum area. It is difficult to understand as to under which provision the appellate Court could have considered such an application filed on behalf of the petitioner. Apart from this, the petitioner had sufficient opportunity to place on record evidence and material to support the aforesaid contention raised on his behalf, about the suit shop being located in a slum area. No effort was made on behalf of the petitioner when the proceedings were pending before the trial Court and it was only before the appellate Court that the application at Exh.21 under Order 41 Rule 27 of the C.P.C. was filed. Even at that stage, the petitioner did not make any effort to obtain documents that he

purportedly could obtain under the provisions of the Right to Information Act, 2005, after judgment was reserved by the appellate Court. This appears to be a classic approach on the part of a tenant to some how delay proceedings in an eviction suit and to raise contentions and arguments regarding miscarriage of justice in higher courts by, initially failing to produce relevant evidence and material at the first instance and then later claiming that some documents were to be placed on record after the proceedings are virtually over in the Court below.

9. Even otherwise, the appellate Court not only allowed the application at Exh.21 under Order 41 Rule 27 of the C.P.C. to objectively analyse as to whether the notification, issued by competent authority regarding slum area, covered the suit shop in the present case. Upon reading the notification and the map placed on record on behalf of the petitioner, the appellate Court came to a considered conclusion that the suit shop was clearly located beyond the slum area and that, therefore, there was no substance in the contention raised on behalf of the petitioner. In such a situation, it would not be appropriate to blame the appellate Court in having failed to have taken into consideration relevant material which was produced even at appellate stage by the petitioner in support of the said contention. The attempt on the part of the petitioner appears to be to some how delay proceedings and by placing on record documents after documents before the appellate Court, while it was his bounden duty to have produced

the relevant evidence and material on record at the outset before the trial Court in support of the said contention.

10. In these circumstances, it cannot be said that the appellate Court committed any error by not taking into consideration the documents filed on behalf of the petitioner after arguments were heard and judgment was reserved. The said documents would not in any manner further the case of the petitioner, because the slum notification dated 12.09.1991 already placed on record clearly demonstrated that there was no substance in the contention raised on behalf of the petitioner pertaining to the suit shop being located in slum area.

11. As regards the concurrent findings rendered by the Courts below on the question of bona fide need and comparative hardship, the petitioner was unable to demonstrate any error committed by the Courts below. Findings rendered by the Courts below are based on settled principle of law that the landlord is the best Judge of his need. In these circumstances, no error can be attributed to the Courts below in granting decree for eviction against the petitioner.

12. The only question that now remains is, as regards the time period to be given to the petitioner for vacating the suit shop, considering the fact that he has been running his tailoring business in the same. Upon hearing the counsel for the parties, this Court finds it

appropriate to grant the petitioner reasonable time of six months to vacate the suit shop. Accordingly, the petitioner shall hand over vacant and peaceful possession of the suit shop to the respondent on or before expiry of period of six months from today. The petitioner shall pay entire arrears of rent, if any, within a period of four weeks from today and he shall continue to pay regular rent to the respondent till such time that he occupies the suit shop under the order of this Court. It is made clear that the petitioner shall not create any third party interest or induct any third person in the suit shop during the period that he occupies the same under the aforesaid direction of this Court.

13. Writ Petition is disposed of.

JUDGE

halwai