

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

WRIT PETITION NO.7879 OF 2017

(TRIMBAK BAPUJI UMALE...VS.. PATIL PATWARI SARAI SANSTHAN, AMRAVATI.)

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

Court's or Judge's orders

Shri N.A.Gawande, Advocate for Petitioner.
Shri K.N.Dadhe, Advocate for Respondent.

CORAM : Z.A.HAQ, J.

DATED : AUGUST 23, 2019.

Heard.

By this petition, the original defendant (tenant) has challenged the judgment and decree passed by subordinate Courts concurrently upholding the claim of the respondent (landlord) for possession of the suit premises.

The subordinate Courts have concurrently recorded that the plaintiff has proved that the defendant had been in arrears of rent for the period from 1st February 2000 till 31st October 2002. The petitioner(tenant) has not been able to point out any illegality or perversity in appreciation of the evidence by both the Courts on this point.

The judgments passed by the subordinate Courts are assailed mainly on the ground that the plaintiff failed to prove his ownership over the suit premises and this relevant aspect is not considered by the subordinate Courts. This argument is required to be rejected. The plaintiff had earlier filed Small Causes Civil Suit No.2 of 2002 claiming arrears of rent from the defendant. This suit was decreed in favour of the plaintiff. Again the plaintiff had issued notice dated 16th

July 2002 calling upon the defendant to pay arrears of rent. The defendant had not given reply to the notice, thus had not disputed the entitlement of the plaintiff to claim arrears of rent. These aspects are considered by the trial Court in paragraph No.6 of its judgment and also by the District Court in paragraph Nos.10 to 13 of the judgment. It cannot be said that any relevant aspect is not considered by the subordinate Courts.

I find that the judgment and decree passed by the subordinate Courts upholding the claim of the plaintiff is based on proper appreciation of the evidence on record and any interference by this Court in the extraordinary jurisdiction, is not required.

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

At this stage, the learned Advocate for the petitioner, on instructions, submits that the petitioner may be granted time till 29th February 2020, to vacate the premises. It is stated that by 29th February 2020 the petitioner will handover vacant possession of the suit premises to the respondent(landlord) and an undertaking to that effect will be filed before this Court till 15th September 2019.

Accepting the request made on behalf of the petitioner, it is directed that the decree shall not be executed till 29th February 2020, however, on condition that the petitioner (tenant) files undertaking on record of this petition till 15th September 2019 stating that he will handover vacant possession of the suit premises to the respondent(landlord) peacefully, till 29th February 2020.

If the undertaking is not filed till 15th September 2019, the protection shall cease to operate from 16th September 2019 and the respondent(landlord) will be at liberty to proceed with the execution.

JUDGE

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