

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

Writ Petition No. 1032 of 2019

Sharad Daterao Vs. Prakash Pinjani

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

Court's or Judge's orders

Mr. J.J. Chandurkar, Advocate for petitioner.
Mr. H.D. Dange, Advocate for respondents.

CORAM : MANISH PITALE, J.

DATED : MAY 4, 2019

By this writ petition, the petitioner (original tenant) and the defendant has challenged the order dated 03/03/2017, passed by the Civil Judge (Senior Division), Amravati (Trial Court), whereby the application for appointment of commissioner filed by the petitioner has been rejected.

2. The respondent (original landlord and the plaintiff) filed suit for eviction and possession against the petitioner under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999, claiming that the suit shop admeasuring 225 sq.ft. was required for his younger son, who was a qualified Chartered Accountant. It was stated in paragraph 8 of the plaint that except the aforesaid shop admeasuring 225 sq.ft. on the ground floor of the building, the rest of the portion of the building was occupied by the elder son of the respondent, who was running a business of

ready-made garments and household articles. There are pleadings in the plaint pertaining to assertions as to why the particular shop in possession of the petitioner was most well suited for the younger son of the respondent. On this basis, bonafide need of the respondent was projected.

3. This was denied by the petitioner in his written statement and an application was moved at Exh.18 for appointment of commissioner to measure the building claiming that the number of floors were more than what was stated by the respondent in the suit. It was contended that only an appointment of commissioner and measurement of the entire building would be in the interest of justice. This application was opposed by the respondent and it is in this backdrop that the impugned order was passed by the Trial Court.

4. A perusal of the impugned order shows that the Trial court has taken into consideration the contentions raised by the rival parties and it has been observed in the impugned order that placing of sanctioned map and building construction / completion certificate from competent authority would be sufficient in the present case to address the apprehensions expressed on behalf of the petitioner. On this basis, while rejecting the application filed by the petitioner, the Trial Court directed the respondent to place on record the building completion certificate of

the suit property issued by the competent authority. It is an admitted position that the respondent has complied with the said direction and completion certificate is very much on record before the Trial Court.

5. Despite this fact, it is contended on behalf of the petitioner that the appointment of commissioner and measurement of entire building is necessary because the petitioner has seriously disputed the assertions of the respondent that the building in question consists only three floors and according to the petitioners the building consists of area much more than what is stated in the plaint. According to the learned counsel for the petitioners, serious prejudice would be caused to the petitioners if the Court commissioner is not appointed and measurement of the building is not carried out. The learned counsel for the respondent has submitted that when the respondent has complied with the direction given in the impugned order by placing the building completion certificate in question, there was no substance in the present writ petition.

6. A perusal of pleadings on record, particularly paragraph 8 of the plaint read with other portions of the plaint therein shows that the respondent has specifically pleaded about the fact that only the said shop in possession of the petitioner is

suited for the requirement of the younger son of the petitioner, coupled with the assertion that barring the suit shop the elder son of the respondent is in possession of balance portion of the building in question. Therefore, it becomes clear that there would be no question of appointment of commissioner to carry out measurement of the entire building. This Court fails to understand the prejudice that the petitioner would suffer if the impugned order of the Trial Court is maintained. Appointment of commissioner and measurement of the building would not serve any purpose, in view of the pleadings on record and the fact that now even the building completion certificate has been placed on record by the respondent in terms of direction given by the Trial Court.

7. In view of the above facts and circumstances of this case, this Court found that there is no merit in the writ petition and accordingly it is dismissed.

8. Considering the fact that the suit was filed in the year 2015 and it is now at the stage of evidence, the Trial court is directed to dispose of the suit as expeditiously as possible and preferably within a period of six months from today.

JUDGE