

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 1282/2018

(SANJAY FATTECHAND SHAHA & OTHERS **VERSUS** RITESHKUMAR SURAJMAL JAISWAL & OTHERS)

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

Court's or Judge's orders

Shri A.V. Bhide, counsel for petitioners.
 Shri A.M. Ghare with Shri N.L. Jaiswal, counsel for R-1.

CORAM : A.S. CHANDURKAR, J.

DATE : JUNE 17, 2019.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

The petitioners who have suffered the decree for eviction as passed by the trial Court and confirmed by the Appellate Court have challenged the same in this writ petition.

The respondent no.1 is the original plaintiff who had filed suit for eviction under provisions of Section 16(1)(g) of the Maharashtra Rent Control Act, 1999. In the plaint, it was pleaded that the plaintiff alongwith other family members were the owners of the suit premises admeasuring 275 square feet. Since the plaintiff intended to start a business in the suit premises and as the tenants owned their own properties, they were liable to be evicted. In the written statement, the need as pleaded was denied. It was further pleaded that the plaintiff was claiming entitlement to the suit property merely on the basis of a preliminary decree for partition passed in his favour. The plaintiff in support of the prayer for eviction examined himself and another witness while the defendant no.1 examined himself. The trial Court held that the need of the plaintiff who was unemployed had been duly proved. The stand of the defendants that the plaintiff was running a country

liquor shop on the strength of the license issued in the name of his mother was not found sufficient to deny the prayer for eviction. On the question of hardship, the same was found in favour of the plaintiff. This decree has been confirmed by the Appellate Court.

Shri A.V. Bhide, learned counsel for the petitioners submitted that the need as pleaded by the plaintiff was not sufficient to warrant passing of a decree for eviction. Though the plaintiff was the owner of another shop premises, a license was given to his mother for running a country liquor shop and therefore there were no *bona fides* in favour of the plaintiff. Moreover, there was no evidence to indicate any alternate business being done by the defendants. He further submitted that in view of the fact that only a preliminary decree for partition has been passed, the plaintiff alone could not have sought eviction of the defendants. It was submitted that both the Courts erred in decreeing the suit for eviction.

Shri A.M. Ghare, learned counsel for the respondent no.1 supported the impugned decree. According to him, the need of the plaintiff was duly proved and accepted by both the Courts. The plaintiff was unemployed and hence he was justified in seeking eviction of the tenant. Even as a co-owner he was entitled to seek eviction of the tenant. It was thus submitted that there was no reason to interfere with the decree for eviction.

On hearing the learned counsel for the parties and after perusing the impugned judgments, it is seen that both the Courts after considering the entire material on record have recorded a finding that the need of the plaintiff was duly proved. The fact that the plaintiff was unemployed and he intended to start his own business has found favour with both the Courts and rightly so. There was no other means for the plaintiff to earn his livelihood.

Even if a preliminary decree was passed in his favour, he was entitled to seek eviction of the tenant. The aspect of hardship has also been considered in favour of the plaintiff. The defendants were having their own premises which were let out on rent. There is also no evidence of the plaintiff owning any other premises for starting his business. It is therefore found that there is no reason to interfere with the decree for eviction.

However, considering the fact that the tenants are in occupation since long, they are permitted to vacate the suit premises by the end of December-2019. This is subject to filing an undertaking in this Court that they would handover vacant possession to the plaintiff by 31.12.2019. They shall also clear the arrears of rent and shall continue to pay the agreed amount of rent till that date. They shall not create any third party rights in the suit property.

The Writ Petition is accordingly disposed of with no order as to costs.

JUDGE

APTE