

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

WRIT PETITION NO. 2195 OF 2019

Archana wd/o Ashok Janai and others

vs.

Smt. Laxmidevi wd/o Badrinarayan Laddhad & others

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

Court's or Judge's orders

Shri. S. I. Khan, counsel for petitioners.

Shri. S. R. Gupta, counsel for respondents No.1 to 5

CORAM : MANISH PITALE J.

DATED : 27/01/2020

By this writ petition (original tenant) has filed the present writ petition challenging the order dated 23/01/2019, passed by the Court of District Judge – 6, Nagpur, whereby an application for stay (Exh.5) filed on behalf of the petitioners has been conditionally allowed. The Appellate Court has imposed a condition that the petitioners shall pay occupation charges for the suit premises @Rs.8000/- p.m. from the date of the judgment and decree passed by the Court below, during the pendency of the appeal.

2. The respondents (original landlords) filed a suit for eviction against the petitioners herein on various grounds, including arrears of rent, bonafide need, and illegal subletting. The Court of Small Causes, Nagpur, decreed the suit in favour of the respondents by holding

in their favour on the grounds on which eviction was sought.

3. By the appeal pending before the Appellate Court, the petitioners herein have challenged the said decree passed by the Small Cause Court. On the application for stay, the impugned order has been passed by the Appellate Court imposing the aforesaid condition.

4. It is submitted by the learned counsel appearing for the petitioners that the condition of depositing Rs.8000/- as occupation charges is onerous as the premises in question are not maintained by the respondents in a proper condition and that considering this aspect to the matter, the amount of Rs.8000/- towards occupation charges is on a higher side. It is contended that a reasonable amount could have been directed to be paid as occupation charges and that therefore, the impugned order passed by the Appellate Court is unsustainable.

5. On the other hand, the learned counsel appearing for the respondents relied upon certain documents filed with an application to indicate that a certificate of an architect had been placed on record before this Court to show that the monthly rental would be at least 10 times more than what has been directed as occupation charges by the Appellate Court. On this basis, it is submitted that the writ petition deserves to be dismissed.

6. It is a settled position of law, that when a decree of eviction is passed against tenant, the relationship between landlord and tenant is severed. It is then for the Appellate Court to impose appropriate condition if stay of the decree of eviction is sought by the tenant. In such a situation, it has been laid down by the Hon'ble Supreme Court, as well as this Court, that the prevailing market rent based upon available material can be taken into consideration by the Appellate Court, while imposing appropriate condition for grant of stay. In the present case, the Appellate Court has referred to the said position of law in paragraph 9 of the impugned order and it has come to a conclusion that, in the facts and circumstances of the present case, it would be appropriate that the petitioners deposit occupation charges at Rs.8000/- p.m., as a condition for grant of stay of the decree of eviction granted by the Small Causes Court.

7. It is undisputed that the suit property is located in a busy market area of Sita Buldi, Nagpur. Although it is claimed by the petitioners that the said property is not maintained properly by the respondents, its location is not disputed. The report of the architect referred to by the respondent may be relatable to a property in a much better condition at the same location, as contended by the petitioners, but even if the said aspect is taken into consideration, the condition imposed by the Appellate Court can not be said to be

unreasonable. The petitioners were in fact found to be in arrears of rent by the Small Causes Court itself and it is evident from the material on record that the aspect of occupation charges decided by the Appellate Court in the impugned order cannot be said to be based on an irrational approach.

8. In view of the above, this Court finds that there is no merit in the present writ petition. Accordingly, it is dismissed.

9. The petitioners are directed to abide by the directions given in the impugned order by the Appellate court and to deposit the arrears of occupation charges within a period of **eight weeks** from today and to ensure that occupation charges @Rs.8000/-p.m. are deposited regularly and without fail before the Appellate Court from **February 2020** onwards. There shall be no order as to costs.

JUDGE