

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

WRIT PETITION NO. 2590 OF 2020

Prakash Rambhau Karande

vs.

Shashikala wd/o Shankarrao Bhandarkar and others

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

Court's or Judge's orders

Shri. Rahul Tajne, counsel for petitioner.

Shri. V.G.Bhamburkar, counsel for caveator/respondent Nos.1 to 4.

CORAM : MANISH PITALE J.

DATED : 19/10/2020

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this writ petition, the petitioner (original tenant) has approached this Court, challenging concurrent orders passed by the two Courts below, whereby a petition for eviction of the petitioner filed by the respondent has been decreed in favour of the respondent.

3. The suit has been decreed on the grounds of bonafide need, as also nuisance created by the tenant in the concerned premises. The Courts below have concurrently found that grounds for eviction under Section 16(1)(c) and(g) of the Maharashtra Rent Control

Act, 1999, have been successfully made by respondents against the petitioner herein.

4. The learned counsel appearing for the petitioner, at the outset, submitted that the second suit filed by the respondents herein was barred by the principle of *res judicata*, because an earlier suit on similar grounds had been rejected and the findings in that proceedings had attained finality by dismissal of writ petition filed in the earlier round by the predecessor of the respondents herein. Apart from this, it was submitted that even on merits the Courts below have committed an error by accepting the case of bonafide need on behalf of the respondents, because the case for bonafide need and comparative hardship was not made out by the respondents in their favour. The finding on the ground of nuisance is also attacked as being erroneous on behalf of the petitioner.

5. Insofar as question of *res judicata* is concerned, the two Courts below have specifically considered the same and it has been found that the earlier suit RCS No.484/2005 was filed only by the Predecessor of the respondents, primarily on the ground that he intended to undertake consultancy business and help his two sons as he retired from his job. There was mention in the earlier proceeding also about the possible need of the children regarding the suit shop premises. The Courts below have found that the subsequent suit filed in 2011, leading to filing of the present writ

petition, was filed not only by the Predecessor of the respondents as plaintiff No.1, but also by one of the sons i.e. respondent No.4 herein as plaintiff No.2. In this second round there were specific pleadings on record regarding the need of both the plaintiffs and also focusing on the need of the plaintiff No.2 (respondent No.4 herein) regarding his intention to take up the business of hardware and sanitary material. On the basis of such pleadings, evidence was led by the plaintiffs and the two Courts below have found that the principle of *res judicata* would not apply. It is found that finding rendered by the two Courts below on the question of *res judicata* is correct and it does not need any interference.

6. Insofar as the merits of the matter are concerned, on the question of bonafide need, there are pleadings and evidence on record to show that the needs projected on behalf of the plaintiffs was sufficiently proved by oral and documentary evidence on record. The Courts below have found that the landlord is the best judge of his bonafide need. The Court cannot supplant its own notions regarding such need projected on behalf of the landlord, which is supported by cogent material on record. On the aspect of comparative hardship, the two Courts below have concurrently found that the petitioner has an alternative premises in the form of a shop, the Sale Deed of which is executed in his name. Therefore, it is not as if the petitioner as the tenant would be left high and dry upon being evicted

from the suit shop premises. It is specifically found by the Courts below that in cross-examination, the petitioner himself admitted that the Sale Deed of the said shop is indeed in the name of one of the petitioners. Therefore, the finding on comparative hardship given by the two Courts below concurrently cannot be said to be erroneous.

7. On the question of nuisance and annoyance being caused by the petitioner in the premises, this Court is of the opinion that two Courts below have concurrently appreciated the material on record to reach such a finding. The said finding does not deserve interference in writ jurisdiction.

8. In view of the above, this Court is of the opinion that no case is made out for interference in the concurrent orders passed by the two Courts below. Accordingly, the writ petition is dismissed. No order as to costs.

JUDGE