

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

WRIT PETITION NO. 7640 OF 2019

Bank of Baroda a Body Corporate established under Banking Companies
(Acquisition and Transfer of Undertaking), Represented by Chief Manager,
Shri.Sanjay Kumar Gupta and another

vs.

Sau. Dr. Kavita w/o Dilip Changole

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

Court's or Judge's orders

Shri. S. N. Kumar, counsel for petitioner.
Shri. S. A. Kalbande, counsel for respondent

CORAM : MANISH PITALE J.

DATED : 12/02/2020

By this writ petition, the petitioner has challenged order dated 12/06/2019, passed by the Additional Small Causes Court, Nagpur, below Exh.34 whereby an application for dismissal of Regular Civil Suit No.42/2018, was rejected, as also judgment and order dated 24/10/2019 passed by the District Judge, Nagpur, whereby appeal filed by the petitioner was dismissed. The respondent in the present case has filed a suit for recovery of property in which the petitioners are undisputedly tenants. It is claimed in the said suit that the property was leased out to the petitioners as per an agreement dated 29/08/2001 and that period of the lease has expired.

2. In this suit, at the stage when the respondent (original plaintiff) was to be cross-examined, an application for dismissal of the suit was moved on behalf

of the petitioner (Exh.34). It was claimed that one of the co-owners i.e. sister of the respondent had granted her consent for renewal of lease and that in such a situation the suit deserved to be dismissed.

3. This application was resisted on behalf of the respondent.

4. By impugned order dated 12/06/2019, the Court of Additional Small Causes Court rejected the said application by holding that the contentions raised on behalf of the petitioner were to be yet tested by way of trial and that the suit could not be dismissed at that stage.

5. Aggrieved by the same, the petitioners filed an appeal before the District Court, which stood dismissed by judgment and order dated 24/10/2019, wherein the Appellate Court categorically held that the documents on the basis of which the petitioners were claiming that the co-owner had given her consent for renewal of the lease, were yet to be proved and that therefore, the suit could not be dismissed at that stage.

6. In the present writ petition, while issuing notice and granting ad-interim stay in favour of the petitioner, this Court took note of the judgment of the Hon'ble Supreme Court in the case of **India Umbrella Manufacturing Co. and Ors. vs. Bhagabandei Agrawalla (Dead) by LRs and others**, AIR 2004 SC 1321.

7. The learned counsel appearing for the

petitioners submitted that in the said judgment, the Hon'ble Supreme Court had categorically held in similar circumstances that decree of eviction could not be granted against the lessee and that therefore, in view of the letter and other documents on record showing that the co-owner had given her consent for renewal of the lease, the suit ought to have been dismissed.

8. On the other hand, learned counsel appearing for the respondent submitted that the contentions raised on behalf of the petitioners required the matter to go to trial and that therefore, the suit could not be dismissed at the present stage.

9. A perusal of the judgment of the Hon'ble Supreme Court, on which the reliance is placed by the learned counsel for the petitioners, does indicate that when one of the co-owners gives consent for extension of lease, a decree of eviction cannot be granted at the behest of another co-owner. There can be no dispute about the said proposition of law, but it is significant that in the case before the Hon'ble Supreme Court, the dispute between the parties had reached its finality before the Trial Court after fulfilled trial and the matter was then taken up in appeal. It was on the basis of evidence and material on record that a positive finding was rendered regarding consent of the co-owners for renewal of lease.

10. Such is not the stage of the proceedings in the present case. The suit before the Small Causes Court

in the present case is at the stage of cross-examination of the respondent (original plaintiff).

11. The letter and other documents on which the petitioners have placed reliance would have to be tested in a fulfilled trial before the Trial Court and if what is contended on behalf of the petitioners on the basis of such documents is found to be proved before the Small Causes Court, the law as laid down by the Hon'ble Supreme Court in the aforesaid judgment would apply and consequences would follow.

12. But, at this stage it would not be appropriate to accept the contention raised on behalf of the petitioners. The two Courts below have appreciated this aspect of the matter. This is evident from the observation made by the Appellate Court in paragraph 9 of the impugned judgment and order, wherein it is correctly observed that the documents on which the petitioners placed reliance are yet to be proved and therefore, at this stage it cannot be said that the suit deserved to be dismissed.

13. In view of the above, it is found that there is no merit in the present writ petition and it is dismissed.

14. Needless to say interim stay granted by this Court stands vacated.

JUDGE