

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

WRIT PETITION NO.802/2020

Krishnakumar s/o Mukundlal Panpalia,
Proprietor, Shri Medicos and General
Stores, r/o H.No.7, Ward No.8, Prabhag
No.78, Joharipura, Tilak Road, Mahal,
Nagpur.

.....**PETITIONER**

...V E R S U S...

1. Shri Kishore s/o Mohanlal Khodiar,
aged about 50 years, Occ. Business,
r/o Plot NO. 23, Shastri Nagar,
Nagpur.
2. Shri Bharatbhushan s/o Nathuramji
Budhraj, aged 60 years, Occ. Business,
r/o Zenda Chowk, Mahal, Nagpur.

...**RESPONDENTS**

Mr. Fidvi Ibrahim Abid, Advocate for petitioner.
Mr. A. S. Murty, Advocate for respondents.

CORAM:- V. M. DESHPANDE, J.
DATED :- 08.02.2021.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties. Heard Mr. Fidvi
Ibrahim Abid, learned counsel for petitioner and Mr. A. S. Murty,
learned counsel for respondents.

2. The petitioner has approached this Court challenging the order passed by learned District Judge-3, Nagpur dated 04.12.2019 below Exh.-39 in Regular Civil Appeal No. 49/2013 whereby learned appellate Court rejected the application filed by petitioner seeking permission to cross-examine original plaintiff.

3. Few facts would be necessary to be narrated here. They are as under.

The petitioner is tenant in shop block area 8 X 15 i.e. 120 Sq.Ft. on house property bearing Municipal Corporation house No. 7/0+5, survey no. 177, sheet no. 224, circle no.2, Division No.1, Ward No. 8, situated at Joharipura, Tilak Road, Mahal, Nagpur. The petitioner is a monthly tenant. His tenancy commences on the first day of English calendar month and ends on the last day of that month. The petitioner is tenant from 1982.

4. By virtue of sale deed dated 18.10.2004, the present respondents acquired the title of the property where the suit shop is situated. Thereafter, the tenancy of the petitioner was attorned.

On 16.10.2009, the present respondents filed suit for ejectment, possession and mesne profit under Section 16 (1) (g)

of the Maharashtra Rent control Act, 1999, which was registered as Regular Civil Suit No.334/2009. The suit was contested. The parties entered into witness box to substantiate their pleadings. The learned Additional Judge, Small Causes Court, Nagpur, vide judgment dated 14.12.2012 was pleased to decree the suit filed on behalf of respondents and ordered eviction of the petitioner from the suit shop block.

5. Being aggrieved thereby, the petitioner filed appeal under Section 34 of the Maharashtra Rent Control Act, 1999. The appeal was registered as Regular Civil Appeal No.41/2013.

During pendency of the appeal, the petitioner moved an application under Order XLI Rule 27 of the Code of Civil Procedure for production of document. The said application was moved on 09.10.2015. The documents were pertaining to the Bombay Shop and Establishment Certificate and Form No. 20 and 21 i.e. license to sell, stock or exhibit for sale or distribute drugs. The said application filed on behalf of the petitioner was allowed by the learned Judge, appellate Court on 09.12.2016 in view of no objection given by the respondent/original plaintiff.

Thereafter, the petitioner filed an application (Exh.-21) for amendment of the written statement under Order VI Rule 17 of the Code. The application for amendment of the written statement was allowed on 22.07.2016. Accordingly, following paragraphs were prayed to be inserted in the written statement.

“10. It is respectfully submitted that all allegations of plaintiffs that suit premises are bonafide required by them to start business therein, are false and concocted to the knowledge of plaintiff themselves.

11. I sit submitted that plaintiff No.1 is having his own big residential cum commercial house at Shastri Nagar, Near Wardhaman Nagar, Nagpur constructed on plot No.23.

12. It is further submitted that plaintiff No.2 is also having big residential cum commercial house at Zenda Chowk, Naik road, Nagpur. So also he has started his business of selling Pan material, cigarette, etc. under the name and style of ‘Shree Narayanji Agency’ at Bharat Chambers, House No.497, Ward No.36, Nehru Putla, Itwari, Nagpur. The said house is three storied building admeasuring about 900 sq.ft. plot area owned and possessed by plaintiff No.2. Plaintiff No.2 has also purchased a huge bungalow at East Wardhman Nagar, Nagpur. Thus plaintiff No.2 is having more than sufficient accommodation for his alleged need.

13. *In view of above, it may be seen that plaintiffs have acquired vast accommodations and that plaintiffs will not suffer any hardship at all, in the event their claim in suit is rejected.*

14. *That, admittedly defendant is carrying on his business in suit premises and at no point of time he had kept the suit premises locked and unused.*

15. *Thus under these circumstances, suit of plaintiffs is liable to be dismissed and it be dismissed with costs.”*

6. After incorporation of amendment in the written statement, petitioner moved an application Exh.-30, seeking permission to cross-examine the plaintiff and to adduce his evidence. Vide order dated 02.07.2018, the application was rejected by the learned District Judge primarily for following reasons:

“On perusal of present application, it appears that appellant has not mentioned on which point he wants to cross-examine respondents, neither he has mentioned which fact he wants to prove, for which oral evidence is necessary.”

Thereafter, petitioner again moved fresh application on 23.08.2018 (Exh.-39) seeking the relief, which was claimed in Exh.-30. Application was rejected, hence this writ petition.

7. Learned counsel for the petitioner would submit that once the application for amendment of the written statement was allowed and permission to file document was granted, the learned Judge of the appellate Court ought not to have rejected the application since according to him it will nothing but denial of opportunity to point out his case.

8. Per contra, learned counsel for petitioner would submit that these applications are nothing but prolong the litigation. He submits that the appeal is pending from 2013, still the appeal is awaiting verdict from the appellate Court. Hence, he prays for dismissal of the writ petition.

9. Prior to amendment of the written statement, it was pleaded by the petitioner that plaintiffs are very rich persons and they are having various properties in the city of Nagpur. Before the learned Judge, during the cross-examination the plaintiff gave following replies from the witness box:

“It is true that in Shastri Nagar, I have big house. That is on Vaishno Devi Chowk, Mahal, Nagpur. Plaintiff No.2 Bharat Bhushan is having businss in the name of Karan Agencies which situated at Itwari, Nehru Putla,

Nagpur. My sop is at Mahal, Nagpur having suiness of Pan Masala Traders by name and style K. K. Traders. We both brothers having independent business. Our residential as well as business place are different...”

10. It would be important to note herein that the respondent did not challenge the order passed by learned Judge of the appellate Court on 09.12.2016 and 22.07.2016 whereby the appellate Court allowed the application filed on behalf of the petitioner for production of documents and for amendment of the written statement. By not questioning legality of order granting permission to amend the written statement, the said order has attained finality.

11. I have already reproduced supra, the amendment that was permitted to be carried out in the written statement. That pertains to the denial of the claim of the plaintiffs that they require shop in question for their use. Also, by the written statement, it was brought on record about alternate accommodation available to the plaintiffs.

12. The suit was filed primarily for getting decree on the ground of bona fide requirement, though, other ground is also

mentioned in the plaint. While considering the bona fide need, the Courts have to examine comparative hardship. If that be so, once the amendment was allowed to be brought in the written statement the Court will have to decide the aspect of comparative hardship also. Therefore, in my view, the Court below ought to have allowed the application seeking cross-examination of the respondent-plaintiff.

13. The first application (Exh.-30) was rejected because the Court found that in the application it is not mentioned as to on what point he wants cross-examination. This application was not rejected on its own merit, but it was rejected as the application is vague in nature.

By filing the fresh application Exh.-39 in paragraph 3, the petitioner has submitted on what point the petitioner wishes to cross-examine the landlord.

14. In my view, since Court has to decide on considering comparative hardship opportunity has to be given to petitioner permitting cross-examination of landlord on the points which are enumerated in paragraph 3 of application (Exh.-39).

15. In view of above, the writ petition is allowed. Order passed by learned District Judge-3, Nagpur dated 04.12.2019 below Exh.-39 is quashed and set aside. The petitioner is permitted to cross-examine the landlord on the points which are mentioned in paragraph 3 of the application Exh.-39 only. The learned District Judge, on whose file Regular Civil Appeal No.41/2013 is pending, shall record the cross-examination of the landlord so as to save time of remanding the matter back to the trial Court. Parties are directed to appear before the appellate Court on 12.03.2021. On that day, the landlord shall make himself available for cross-examination and the petitioner shall cross-examine the landlord on the said day, without fail.

The learned Judge shall decide Regular Civil Appeal No. 41/2013 as expeditiously as possible and within a period of three months from 12.03.2021.

Rule accordingly. No order as to costs.

JUDGE

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