

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

WRIT PETITION NO.3731/2016

Narendra Govind Bhandarkar,
aged about 68 years, Occ. Retired,
r/o Civil Lines, Chandrapur.

.....PETITIONER

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

Gopal Shersingh Thakur,
Aged about 49 years, Occ. Private,
r/o Plot No. Pawan Bhoomi Layout,
Somalwada, Nagpur.

...RESPONDENT

Mr. U. M. Aurangabadkar, Advocate for petitioner.

CORAM:- V. M. DESHPANDE, J.
DATED :- 01.03.2021.

JUDGMENT

1. By this writ petition, the petitioner is challenging the judgment and decree passed by learned District Judge-7, Nagpur in Regular Civil Appeal No. 985/2012. By the said, the learned appellate Court, by allowing appeal filed on behalf of respondent, set aside the judgment and decree passed by learned Additional Judge, Small Causes Court, Nagpur in Regular Civil Suit No. 343/2006 dated 05.09.2012.

2. This writ petition was admitted for final hearing on 21.06.2019. Vide order dated 07.12.2020, considering that the

petitioner is a senior citizen and suffering from ailments, the application for early hearing filed by him was allowed.

Today, when this writ petition was taken up for final hearing, though learned counsel for petitioner Mr. Aurangabadkar is present, learned counsel for respondent Mr. Moon, chose not to remain present.

3. Petitioner is landlord whereas respondent is tenant.

According to the submissions of learned counsel for petitioner, the learned Judge of the appellate Court committed error in dismissing the suit filed on behalf of petitioner. He submitted that the petitioner has proved his bona fide need to occupy the premises. He also submitted that since respondent has secured alternate accommodation, the appellate Court ought not to have reversed the finding given by learned Judge of the trial Court. He submitted that the writ petition be allowed.

No precedent, either reported or unreported of any case was cited before this Court at the time of hearing.

4. The petitioner filed a suit for possession. According to the petitioner, he is absolute and exclusive owner of the house

bearing Nagpur Municipal Corporation House No.1860/18, situated at Pawanbhoomi layout, Somalwada, Nagpur. The said house is having one block of three rooms and the same is in possession of respondent as tenant. In the plaint, it is stated that rent is Rs.1250/- per month, which does not include water and electricity charges to be paid by tenant on its actual consumption. Also, the rent is exclusive of taxes levied by the Nagpur Municipal Corporation. It was stated in the plaint that the respondent is occupying the suit block since last 8 to 10 years. He was irregular in payment of rent and committed default. It was stated in the plaint that at the time of filing of the plaint, respondent was in arrears of rent for about 35 months.

5. It was also pleaded that petitioner stood retired from his service and is presently residing at Chandrapur where his wife is in service. He intends to shift to Nagpur as his other brother and members of his family are settled at Nagpur. Since, the petitioner intends to shift at Nagpur, he requires accommodation for himself. Thus, the decree was sought for bona fide need. It was also contended by the petitioner that respondent has already acquired alternate accommodation on his own and is having house

property near the locality. Thus, the petitioner claimed decree on the ground that the respondent is in arrears of rent. He requires the tenanted premises for his bona fide accommodation and the respondent-defendant has secured the alternate accommodation.

6. The respondent, on being summoned filed written statement and denied each and every pleading and allegation made in the plaint. It was also pointed out that in fact the petitioner is having four rooms available for him and in the house where the suit block is situated. It was also pointed out that the petitioner is having his ancestral house at Laxmi Nagar and he used to stay therein when he used to visit from Chandrapur. The contention on behalf of the petitioner that tenant has secured alternate accommodation was also denied.

On behalf of the petitioner, he entered into the witness box as PW1 and also his wife Smt. Vijaya as PW2. The respondent also entered into the witness box.

7. Learned Additional Judge, Small Causes Court, by his judgment dated 05.09.2012, decreed the suit and the respondent was directed to hand over possession of the suit premises. While

granting decree, it was observed by the learned Judge, Small Causes Court that on 30.08.2012, respondent-defendant filed pursis Exh.-77 by submitting that he has deposited the arrears of rent of Rs.22,500/- vide CCD 1157 on 17.12.2007 in the Court, which was withdrawn by the petitioner-plaintiff on 16.01.2009.

8. Though it was the case of the petitioner-plaintiff that the respondent-defendant was in arrears of rent for about 35 months, it was, of course, denied by respondent-defendant, no point in that behalf was formulated by learned Judge, Small Causes Court. No finding was given by the learned Additional Judge, Small Causes Court that respondent-defendant was in arrears of rent for about 35 months. In spite of that, no cross-appeal was filed on behalf of the petitioner. Not only that, the rent deposited by respondent-defendant was withdrawn by petitioner-plaintiff. In addition to the said, before this Court, non payment of rent for 35 months was not pressed into service.

9. It is to be adjudicated in this writ petition as to whether the petitioner is having bona fide need and the respondent has secured alternate accommodation.

10. Ownership of the petitioner over the suit house is not in dispute. The petitioner was in service and he stood retired in the year 1998. From the evidence of the petitioner, it is clear that the petitioner owns the plot admeasuring 3000 Sq. Ft. and having 900 Sq.Ft. construction. He has admitted in his cross-examination that on backside of the house, respondent-defendant is occupying two rooms and one storeroom and it is on Western side. He admitted that three bedrooms, one hall and one kitchen are East facing and these East facing rooms are vacant. Precisely, this has weighed in the mind of the learned Judge of the appellate Court to allow the appeal filed on behalf of respondent-defendant.

11. Before this Court, it was contended on behalf of the petitioner that the vacant rooms facing East are not sufficient to cater the needs of the petitioner. The pleading and evidence of the petitioner has no foundation for the same. In fact, in the plaint, this aspect was not at all pleaded. The plaint is conspicuously silent that three bedrooms, one hall and one kitchen facing East are in vacant condition. Thus, the said fact was suppressed in the plaint. It has come on record during the cross-examination of the plaintiff. It is also brought on record through

his cross-examination that the petitioner's son was occupying the said portion along with his friends when he was taking education who is now settled at Pune. The petitioner has not brought on record the number of members of his family either in the plaint or during his evidence. Thus, if the petitioner intends to shift to Nagpur, in my view, the learned Judge of the appellate Court was right in recording a finding that in view of the availability of three bedrooms, one kitchen and one hall and storeroom in the house facing East, caters his bona fide need. Therefore, it cannot be said that the tenanted portion is required by the petitioner.

12. Insofar as alternate accommodation is concerned, the petitioner could only prove that wife of the respondent owns plot no.327 at Nagar Vikas Housing Society. The petitioner could not prove that on the said plot, respondent has made any construction of the house. Thus, though the wife of the respondent is owning a plot, it is an open plot and it cannot be treated as an alternate accommodation.

13. In my view, the learned Judge of the appellate Court has correctly found that the petitioner could not prove his bona

fide need. In my view, even comparative hardship also tilts in favour of the respondent.

No case is made out. The writ petition is, therefore, dismissed confirming the order passed by learned appellate Court. Rule is discharged. No order as to costs.

JUDGE

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