

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

WRIT PETITION NO.5307/2017

Shri Sumukh S/o Diwakarrao Varadpande,
Aged Major, Occ. Agriculturist,
R/o. Plot No.1, Samarthnagar, Nagpur.

..... PETITIONER
(Ori. Defendant)

// VERSUS //

Dharampeth Gruhnirman Sahakari Sanstha,
through its Secretary having office at 89 C,
Ram Nagar, Nagpur.

.... RESPONDENT
(Ori. plaintiff)

Mr. V. S. Bapat, Advocate for petitioner.
Mr. M. A. Randive, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.
DATED : 12/10/2021

ORAL JUDGMENT :

1] Heard Mr. Bapat, learned counsel for the petitioner and Mr. Randive, learned counsel for the respondent.

2] **Rule.** Rule made returnable forthwith.

3] Heard finally by consent of the learned counsel appearing for the parties.

4] The contention of Mr. Bapat, learned counsel for the petitioner / tenant, based upon *Janaki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. And others reported in 2005 (3) BCR 846*, that

Shri. Pramod Manohar Kulkarni – Attorney of the respondent – landlord was not competent to render evidence on behalf of the respondent – landlord is clearly misconceived for the reason that the respondent is a society and has to be represented by someone, which in this case, is by Shri. Pramod Manohar Kulkarni who is the employee of the society, in favour of which, a Resolution dated 5/3/2010 has been passed. The facts in *Janaki Vashdeo Bhojwani* (supra), were totally different inasmuch as the husband of the landlady therein who had no knowledge of the transaction had entered into the witness box, in which context, it was held that he could not appear in place of the party, but only as a witness for the party.

5] In view of this position, I do not find any merit in the contention raised insofar as the order for arrears of rent which has been passed. Admittedly, the finding has been rendered based upon Exhs. 27 and 29 that the petitioner, was a tenant, in view of which, the obligation to pay rent, is statutory. It was therefore necessary for the petitioner / tenant to have satisfied the learned Trial Court by leading cogent evidence as to absence of any arrears, which has not been done, in view of which, the finding rendered regarding the petitioner / tenant being in arrears, cannot be faulted with.

6] In the above view of the matter, I need not go into the argument put-forth by Mr. Bapat, learned counsel for the petitioner regarding entitlement of the witness who has entered into the witness-box on behalf of the plaintiff to give evidence.

7] The petition is devoid of any merits and therefore, is dismissed. No costs.

Rule is discharged.

(AVINASH G. GHAROTE, J)

Sarkate.