

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

WRIT PETITION NO.3485/2016

Dharampeth Gruhanirman Sah. Sanstha,
Office at 89(c) Ram Nagar through
General Power of Attorney
Shri. Pramod S/o Manoharrao Kulkarni,
R/o. Plot No.26, Cosmopolitan Society
Wardha Road, Nagpur. (Ori. Appellant)

..... **PETITIONER**
(Ori. Plaintiff)

// VERSUS //

Shri Sumukh S/o Diwakarrao Varadpande,
A/a: 50 Yrs, Occ.:- Agriculturist,
R/o.:- Block No.1, Constructed on Plot No.1,
Samarth Nagar (East) Wardha road, Nagpur. (Ori. Respondent)

.... **RESPONDENT**
(Ori. Defendant)

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

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

ORAL JUDGMENT :

1] Heard Mr. Randive, learned counsel for the petitioner and
Mr. Bapat, 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 petitioner has filed a suit for eviction on the ground of Sections 15 and 16 (1)(g) of the Maharashtra Rent Control Act, 1999 (for short “the said Act”). The learned Trial Court, by the Judgment dated 12.11.2013, decreed the suit and granted a decree for eviction from the suit property and also decree for arrears of rent and enquiry into the future mesne profit. The defence set up by the tenant that he was in possession of the suit property, not as a tenant but under an agreement of hire purchase was negated on the ground, that no such document was placed on record, neither was there any material to substantiate the plea. The finding regarding tenancy was based upon Exhs.27 and 29 which were proved in the cross-examination of the defendant, which were rent receipts. A decree of eviction was passed.

5] This decree for eviction and arrears of rent was challenged before the learned Appellate Court by the respondent in Appeal No. 34/2014, wherein by a judgment dated 01/02/2016, the decree regarding arrears of rent was maintained, however, the decree for eviction on the ground of bona-fide need was set aside. The learned Appellate Court held that there was no evidence placed on record by the petitioner regarding the existing venue of its office nor the extent of requirement and the finding rendered by the Court below regarding eviction was neither supported by pleadings nor evidence, even

regarding comparative hardship. The petition challenges the denial of the decree for eviction on the ground of bona-fide need. Mr. Randive, learned counsel for the petitioner submits that the need has been established on record, apart from which the plea which was raised by the respondent / defendant, regarding being put in possession of the suit property on a hire purchase basis, was found to be without substance in absence of a document and therefore, the learned Appellate Court ought not to have disturbed the finding regarding bona-fide need under Section 16(1)(g) of the said Act. He therefore submits that the Judgment of the learned Appellate Court, denying the relief of eviction, needs to be set aside and the Judgment of the learned Trial Court, granting the same needs to be restored.

6] Mr. Bapat, learned counsel for the respondent / tenant submits that there is no finding whatsoever rendered by the learned Trial Court regarding the satisfaction of the requirement under Section 16(1)(g) of the said Act, in view of which, permission could not have been granted, which has rightly been set aside by the Appellate Court. He further submits that on behalf of the petitioner / plaintiff, one Pramod Manohar Kulkarni had entered the witness box on the basis of a power of attorney and relying upon *Janaki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd. And others reported in 2005 (3) BCR 846*, he

submits that the said person was not competent to give evidence on behalf of the plaintiff and therefore, there was no evidence whatsoever by the plaintiff in support of its claim.

7] A bare perusal of the Judgment by learned Trial Court, indicates that there is absolutely no reasoning whatsoever in regard to the plea raised by the plaintiff under Section 16(1)(g) of the said Act. Except for a finding rendered in Para 28 in the last four lines, the entire Judgment does not dilate upon the need urged by the petitioner, the evidence led on it and the reason why the same was accepted by the Small Causes Court. In absence of any such discussion and reasoning, a mere finding rendered that the plaintiff was entitled for the decree of eviction and possession, clearly is unsustainable in law. Upon a specific pertinent question being put to Mr. Randive, learned counsel for petitioner to point out the reasoning or discussion regarding the plea under Section 16(1)(g) of the said Act in the Judgment of the Small Causes Court, except for the last four lines of Para 28, he is not able to point out anything. It is a settled position of law, that a finding rendered without any discussion or reason indicating why the same is being rendered, would not satisfy the requirement of law in this regard. That being the position, in my considered opinion, the Judgment of the learned Small Causes Court, insofar as it grants permission under Section 16(1)(g) of the said Act, is clearly not sustainable in law. Added

to that, is the finding rendered by the Appellate Court regarding the absence of pleadings and evidence in this regard as indicated in para 36 of the Appellate Court's Judgment.

8] For the reasons given above, the Writ Petition is dismissed.
No costs.

Rule is discharged.

(AVINASH G. GHAROTE, J)

Sarkate.