

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

WRIT PETITION NO.6008 OF 2016

Sunil Kumar Inderchand Banthia, Aged about 50
years, R/o Jain Real Estate, Utkarsha Building,
Mangalwari Bazaar, Nagpur. **Petitioner.**

:: V E R S U S ::

Bhupendra Singh Meharsingh Sondhi, Aged
about 65, occupation business, r/o Kadbi Chowk,
Nagpur. **Respondent.**

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Shri Y.V.Nayyar, Counsel for the Petitioner.
Shri Nitin Lalwani, Counsel for the Respondent.
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CORAM : **V.M.DESHPANDE, J.**
DATE : **JANUARY 15, 2021**

ORAL JUDGMENT

1. Heard learned counsel Shri Y.V.Nayyar for the
petitioner and learned counsel Shri Nitin Lalwani for the
respondent. **Rule.** Rule is made returnable forthwith. Heard
finally by consent of learned counsel for parties.

2. The respondent has claimed that he is landlord of the
petitioner and has let out premises i.e. shop block admeasuring 10
x 10.5 square feet, situated at Kadbi Chowk to the petitioner on

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monthly rent of Rs.350/- in the year 1981. The respondent filed a suit for ejectment, possession, recovery of rent, and *mesne profit*. The said suit was registered as Regular Civil Suit No.355/2005. The petitioner appeared in the said suit and filed his written statement and it was the petitioner's case in the written statement that he is not tenant as M/s.Bhanthia Motors, a partnership firm, is tenant and, therefore, the suit is bad for mis-joinder. The said was main plea amongst others in the written statement. The Small Causes Court at Nagpur, before which the said suit was pending, framed issue. The issue was that, does plaintiff prove that defendant is his tenant? On 26.4.2014, learned Judge of the Small Causes Court passed a decree holding that the petitioner is not tenant of the respondent and, therefore, the suit was dismissed.

3. Against order passed by learned Judge of the Small Causes Court in Regular Civil Suit No.355/2005, the respondent filed an appeal which was registered as Regular Civil Appeal No.287/2014 and learned 13th District Judge, Nagpur partly allowed the said appeal. By setting aside the judgment in Regular Civil Suit No.355/2005, learned Judge of the Lower Appellate

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Court held that the petitioner is tenant of the respondent and, therefore, remitted the matter back to Trial Court.

4. Today, when this matter was called out, learned counsel for both parties submitted before this Court that after the remand, learned Judge of the Trial Court decreed the suit filed on behalf of the respondent holding therein that he is entitled for decree of possession. It is also informed to this Court that against the judgment and decree, the petitioner filed an appeal before Lower Appellate Court and the said appeal is numbered as Regular Civil Appeal No.504/2017 which is still pending.

5. In this writ petition, question is as to whether the petitioner is tenant or not. The very same issue is also before Lower Appellate Court inasmuch as decree granted in favour of the respondent is resisted by the petitioner.

6. In this view of the matter, without touching to merits of this writ petition and keeping question as to whether the petitioner is tenant of the respondent or not to be agitated by both

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parties in Regular Civil Appeal No.504/2017, I dispose of this writ petition. Hence, I pass following order.

ORDER

(1) The writ petition is disposed of.

(2) The respondent is aged 65 years. Looking to his age, learned of the Lower Appellate Court, before which Regular Civil Appeal No.504/2017 is pending, shall dispose of the said appeal within a period of six months from the date of appearance of parties before it.

(3) The parties are directed to appear in Regular Civil Appeal No.504/2017 on 29.1.2021.

Rule is made absolute in aforesaid terms. No costs.

JUDGE

!! BRW !!

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