

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

WRIT PETITION NO. 1240 OF 2022

Mukund Chandrabhan Kilor (dead) 1-A Ramesh Shriramji Kilor and ors.
..VS..

Devanand s/o Gangadhar Swai Arankar

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri O.W. Gupta, Advocate for the petitioners.

CORAM : ROHIT B. DEO, J.
DATED : 03/03/2022.

The petitioners are the legal representatives of the original defendant in Small Causes Civil Suit 36 of 2009 instituted by the plaintiff - respondent herein seeking decree of eviction and recovery of arrears of rent.

2. The learned 2nd Joint Civil Judge, Junior Division, Amravati decreed the suit vide judgment dated 27.08.2010.

3. The facts culled out in the judgment of the learned Trial Judge are, that the suit property was leased out by the plaintiff to the defendants on monthly rent of Rs.5/- (Rupees Five only). The plaintiff preferred an application before the Rent Controller, Amravati for determination of fair rent, which was rejected. The appellate authority interfered vide order dated 28.12.2005 and the fair rent was fixed at Rs.125/-(One Hundred and Twenty Five Only) per month payable from 01.01.2006. The defendant was in arrears and vide notice dated 31.10.2008, the plaintiff called upon the defendant to clear the arrears of rent. The notice was duly served, but evoked no response. The plaintiff instituted the suit and the defendant preferred written statement in response to the summons received. The defendant did not

dispute the title of the plaintiff and merely denied the service of notice.

4. The learned Trial Judge noted that not only is the title of the plaintiff admitted, there is no dispute qua the relationship of landlord and tenant. The learned Trial Judge noted the acknowledgment Exhibit 22 and held that the service of the statutory notice was duly proved. Notably, it is further observed by the learned Trial Judge that the defendant admitted during the cross-examination that, he did not deposit the rent as demanded in notice Exhibit 21. The feeble attempt of the defendant – tenant to feign ignorance as regards the proceedings before the Rent Controller and then the appellate authority, were given no credence by the learned Trial Judge. On the basis of the evidence on record, the learned Trial Judge decreed the suit, observing that even after receiving the suit summons, the tenant did not avail the opportunity of depositing the arrears within the prescribed period.

5. The tenant preferred Regular Civil Appeal 73 of 2010, which is dismissed by the District Judge – 1, Amravati vide judgment dated 16.10.2010.

6. At the stage of final arguments of the appeal, the tenant preferred an application under Order XLI Rule 27 of the Code of Civil Procedure for adducing additional evidence and preferred a separate application seeking permission to amend the written statement. The application seeking permission to adduce additional evidence is predicated on the assertion that the suit property belongs to public trust and that the plaintiff is not the owner thereof. The application seeking permission to amend the written statement is also on

such basis. The learned Appellate Judge has noted that there was no dispute whatsoever, that the plaintiff and the defendant are landlord and tenant and indeed, such was the admitted position on record. On the other aspects of the matter, the learned appellate Court have appreciated the material on record and held that the tenant must be evicted since irrefutably he did not pay rent either in response to the notice or then after receiving the summons, within the prescribed period.

7. Learned counsel Mr. Gupta, who appears on behalf of the petitioner-tenant invites my attention to a decision in Second Appeal 413 of 2003, which according to him would suggest that the suit property is not owned by the plaintiff. I do not see anything in the said order to draw such an inference, particularly since the landlord is not a party to the suit. Be that as it may, the decision dated 10.10.2005 in Second Appeal 413 of 2003 is absolutely irrelevant in the context of the fact that the statutory definition of landlord in Section 7(3) reads thus :

“7(3) “ Landlord” means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of, any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord, and further includes in respect of his sub-tenant, a tenant who has sub-let any premises; and also includes, in respect of a licensee deemed to be a tenant under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the licensor who has, given premises on licence and in respect of the State Government or as the case may be, the Government allottee referred to in sub-clause (b) of clause (2) deemed to be a tenant by

section 27, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the 7th December, 1996, that is before the coming into force of the Bombay Rent, Hotel and Lodging House Rates Control, Bombay Land Requisition and the Bombay Government Premises (Eviction) (Amendment) Act, 1996.”

8. Apart from the fact that the observations of this Court in Second Appeal 413 of 2003 do not take the case of the petitioner-tenant any further, the issue of title is irrelevant since admittedly, the petitioner-tenant was and is in possession pursuant to an agreement of lease and has admitted the respondent to be his landlord. The petitioner-tenant has also paid rent to the plaintiff-landlord although due to the arrears, he subsequently rendered himself liable for eviction.

9. The petition is frivolous and is dismissed with costs.

JUDGE

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