

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

CIVIL APPLICATION (W) NO. 1163/2021 & 703/2022

IN

WRIT PETITION NO. 2322 OF 2021

Nivrutti s/o Jagobaji Bhosale

Vs.

Sitram s/o Ramjivanprasad Agnihotri

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. J.J. Chandurkar, Advocate for petitioner.
Mr. Sudhir Malodey, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 09.06.2022.

These applications are filed on behalf of the petitioner seeking permission to file depositions of the parties on record and also to place on record judgment pertaining to a litigation initiated earlier between the same parties.

2. Perused the contents of the applications. In the interest of justice, the said applications are allowed.

Writ Petition No.2322/2021

1. By this petition, the petitioner has challenged judgment and order dated 13.03.2020, passed by the Court of District Judge-10, Nagpur, (herein after referred to as the 'appellate Court'), whereby an appeal filed by the petitioner has been dismissed and decree passed in favour of the respondent for eviction and possession has been confirmed. This is the second round before this Court, for the reason that in an earlier round when the two Courts below had concurrently held in favour of the respondent, the petitioner had approached this Court. This Court had set aside the order of the appellate Court and remanded the matter back, with certain directions.

2. The respondent filed a suit for ejectment, possession and recovery of damages for alleged illegal occupation by the petitioner of premises consisting of two blocks therein i.e. Block Nos.2 and 3 in Corporation House No.116, Ward No.62, Circle No.21 situated at Gittikhadan Chowk, Katol Road, Nagpur. It was claimed on behalf of the respondent that he was entitled to a decree in the aforesaid manner, for the reason that the petitioner was a habitual defaulter in payment of rent and that the

premises were required bonafide for expansion of business of the son of the respondent. The said suit was filed in the year 2009 before the Small Causes Court.

3. The petitioner opposed the reliefs claimed on behalf of the respondent and referred to an earlier suit filed in the year 2003, for his eviction, which was dismissed by the Small Causes Court in the year 2005 and which was not further challenged on behalf of the respondent. The petitioner claimed that none of the two grounds were made out by the respondent and that the suit deserved to be dismissed. The parties led oral and documentary evidence in support of their respective stands. The Small Causes Court took into consideration the pleadings, as also the evidence and material on record, rendering findings in favour of the respondent. Accordingly, by judgment and order dated 31.03.2015, the Small Causes Court decreed the suit and directed the petitioner to handover peaceful possession within three months to the respondent. Further direction was given for payment of arrears of rent.

4. Being aggrieved by the same, the petitioner filed Regular Civil Appeal No.351/2015, before the

appellate Court. By judgment and order dated 06.11.2017, the appeal was dismissed and the decree was confirmed. Thereupon, the petitioner approached this Court by filing Writ Petition No.1296/2018. The said petition was partly allowed. This Court set aside the judgment and order passed by the appellate Court and remanded the matter back to the said Court for decision in accordance with law. Specific directions were given to the appellate Court in the light of the contentions raised on behalf of the petitioner, that demolition of part of the suit premises for road expansion was an aspect which was not appreciated in the correct perspective by the appellate Court. In the light of the said submission, this Court remanded the matter and gave specific directions.

5. Thereafter, a Court Commissioner was appointed, who was an Official of the Nagpur Improvement Trust (NIT). The Commissioner submitted two reports. The petitioner moved an application for permission to cross-examine the Commissioner after the first report was filed. The petitioner also moved an application raising objection to the second report, making a further prayer for appointment of any other officer of the NIT along with an officer of the City Survey Office as

Joint Commissioners for spot inspection and submission of a detailed report.

6. The appellate Court took into consideration the report filed by the Court Commissioner and by judgment and order dated 13.03.2020, found that despite the reports that had come on record, no ground was made out by the petitioner for interference in the decree passed by the Small Causes Court. Accordingly, the appeal was dismissed by the judgment and order dated 13.03.2020. Aggrieved by the same, the petitioner filed the present writ petition. The parties appeared through counsel.

7. Mr. J.J. Chandurkar, learned counsel appearing for the petitioner submitted that perusal of the impugned judgment and order passed by the appellate Court would show that the specific directions given by this Court while remanding the matter back to the appellate Court had not been complied with in letter and spirit. It was submitted that even the Court Commissioner in his reports had given inconclusive findings. Opportunity to cross-examine the Court Commissioner was not granted, thereby indicating that reliance placed by the appellate Court on the reports of the Court Commissioner was

inappropriate and that therefore, the findings were vitiated. Specific reliance was placed on the contents of the order of this Court dated 01.11.2018, passed in Writ Petition No.1296/2018, to contend that the directions given in the said order were violated by the appellate Court while rendering the impugned judgment and order.

8. It was submitted that if the reports of the Court Commissioner were to be ignored, there was absence of any material to indicate as to what was the effect of demolition of part of the suit premises during road widening. The said demolition had an impact on both the grounds for eviction raised on behalf of the respondent i.e. arrears of rent as well as bonafide need.

9. It was further submitted that the earlier suit filed in the year 2003 was dismissed in the year 2005, wherein the Small Causes Court had specifically found that the need projected on behalf of the respondent was not genuine, as three shops had been given on rent even while it was claimed that the suit shops were required for expansion of business of the son of the respondent. It was submitted that in the pleadings in the subsequent suit filed in the year 2009, there was no statement as to what

was the change in circumstance or the genuine bonafide need for which eviction was sought. On this basis, it was submitted that the impugned judgments and orders deserved to be set aside and the suit filed by the respondent deserved to be dismissed.

10. On the other hand, Mr. Malode, learned counsel appearing for the respondent submitted that the directions given by this Court while remanding the matter back to the appellate Court, were substantially complied with. It was submitted that the reports of the Court Commissioner elaborately brought on record the fact that although there was demolition for expansion of road, only those portions that amounted to encroachment on open land were demolished and that the suit tenant premises were not affected in any manner.

11. It was further submitted that the petitioner failed to demonstrate as to whether the application filed for cross-examination of the Court Commissioner after the first report and objection to the second report were ever pressed before the appellate Court. None of such contentions were recorded in the impugned judgment and order and that therefore, the appellate Court was

justified in referring to the reports of the Court Commissioner and arriving at findings in favour of the respondent. It was submitted that the dismissal of the earlier suit on the ground of bonafide need would not prevent the respondent from filing the subsequent suit and that there were sufficient pleadings on record to indicate that the suit premises were required bonafide for expansion of business of the son of the respondent.

12. It was further submitted that the evidence on record also indicated that the petitioner himself owned certain premises in which coaching classes were being conducted and that the said premises were touching the road. Therefore, it was submitted that the impugned decree passed by the Small Causes Court, as confirmed by the appellate Court, did not deserve any inference.

13. This Court has considered the rival contentions in the light of the material placed on record. The principal contention raised on behalf of the petitioner is that the manner in which the appellate Court proceeded in the present matter, demonstrated that specific directions given by this Court stood violated. For examining the said contention, it would be necessary to

refer to the order dated 01.11.2018, passed by this Court in Writ Petition No.1296/2018. A perusal of the said order shows that this Court referred to an admission given in cross-examination by the respondent that in the process of demolition for expansion of road, some portion of the suit premises was also affected. This Court found that demolition of part of the suit premises would be a relevant circumstance for rendering findings on both the grounds of eviction raised by the respondent. It was found that in such circumstances the order passed by the appellate Court rejecting an application for appointment of Commissioner was not appropriate and that a proper examination of facts was necessary. Accordingly, the matter was remanded to the appellate Court.

14. A perusal of the material on record shows that an official of the NIT was appointed as Commissioner and two reports of the said Commissioner came on record. The first report dated 07.12.2019, recorded that the petitioner was found to be in possession of about 676 sq. ft. area. This was significant because the tenanted portion, even as per the pleadings of the rival parties, was significantly less than the aforesaid area. It was also recorded in the report about the extent of constructed

portion in possession of the petitioner. The second report of the Court Commissioner dated 03.02.2020, categorically recorded that no portion of the area belonging to the respondent was affected by the widening of the road and that the widening of the road was undertaken up to the footpath. It was also categorically recorded in the said report that no portion of the tenanted portion was demolished in the exercise of road widening. It was indeed stated in both the reports that it would be appropriate that further verification is done by an officer of the City Survey department.

15. The record also shows that after the first report of the Court Commissioner was submitted, an application was moved on behalf of the petitioner for cross-examining the Court Commissioner. It was also found that after the second report the Court Commissioner was submitted the petitioner raised objection and also made a prayer for appointment of another officer of NIT along with a City Survey Officer as Joint Commissioners for spot inspection.

16. It is significant that in the impugned judgment and order passed by the appellate Court, it is

nowhere indicated, either that the application filed after the first report or that the objection raised after the second report of the Commissioner were pressed on behalf of the petitioner.

17. In fact, a perusal of the impugned judgment and order also shows that when the appeal was heard no such ground was raised on behalf of the petitioner. This Court is of the opinion that in these circumstances the approach adopted by the appellate Court cannot be found fault with. The appellate Court took into consideration the material available on record and it was found that even though there was demolition as a consequence of road widening by the NIT, but nothing indicated that portions of the tenanted suit premises stood demolished as a consequence of the said exercise. Once this aspect is established and it is found that the appellate Court reached a reasonable conclusion as regards the aforesaid aspect of the matter, it cannot be said that the petitioner has made out a case for interference in the present petition.

18. In fact, the appellate Court carefully referred to the material available on record, as also the reports of

the Commissioner to record the extent of the suit tenanted premises, as also the effect of road widening by the NIT and the area that was demolished in the process. It was found that the exercise of demolition carried out by the NIT affected only that portion, which was in fact an encroachment on public area. This Court is not convinced that the aforesaid findings rendered by the appellate Court deserve to be interfered with in the present writ petition.

19. Once the aforesaid conclusion is reached, the contention sought to be raised on behalf of the petitioner that directions given by this Court were not followed by the appellate Court, cannot be accepted. The findings rendered by the appellate Court are reasonable and they are based on an appropriate appreciation of material available on record. As a consequence, contentions sought to be raised that the Courts below erred on both grounds of eviction, cannot be accepted.

20. Insofar as the ground pertaining to default in payment of rent is concerned, this Court has perused the findings rendered by the Small Causes Court, as well as the appellate Court. It is found on the basis of admissions

given by the petitioner in cross-examination, that there was indeed default on the part of the petitioner in payment of rent. Since the theory of part of the tenanted suit premises being demolished is not accepted by this Court, there is no question of the same having any impact on the calculation of the liability to pay rent on behalf of the petitioner. Therefore, findings rendered by the two Courts below concurrently on the said ground are confirmed.

21. Insofar as bonafide need is concerned, much emphasis was placed on behalf of the petitioner on dismissal of the earlier suit. But, a perusal of the documents, as also the evidence on record indicates that the respondent had given details as to the manner in which his son intends to expand business of motor vehicle repairing and why the tenanted suit premises were ideally located for the same. It was not as if the respondent had claimed that only a particular specified area of premises was necessary for expansion of business and therefore, it can be said that the emphasis placed on behalf of the petitioner as regards the impact of demolition during the road widening exercise was misplaced. It is also found on the basis of admissions given in cross examination by the

petitioner that he is owner of a property which is adjacent to the road, wherein coaching classes are being run. Therefore, it cannot be said that even on the question of hardship, the petitioner had made out a case in his favour.

22. In view of the above, it is found that the petitioner has failed to make out any case for interference in the impugned orders, at the hands of this Court exercising writ jurisdiction. Therefore, the writ petition is found to be without any merit and accordingly, it is dismissed.

JUDGE

Prity

Signed By:PRITY S GABHANE
Reason:
Location:
Signing Date:13.06.2022 10:57