

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

WRIT PETITION NO.1415 OF 2022

Hariprasad Babulalji Dube,
Aged about 45 years,
Occupation : Business,
Resident of Near Shitala Mata Mandir,
Sindi (Meghe),
Tahsil and District Wardha. **PETITIONER**

...V E R S U S...

Smt. Archana Pradip Badjate,
Aged about 48 years,
Occupation : Business,
Resident of Nagaji Maharaj Temple,
Ward No.1, Wardha,
Tahsil and District Wardha. **RESPONDENT**

Mr. Kaustubh R. Lule, Advocate for Petitioner.
Mr. N. R. Saboo, Advocate for Respondent.

CORAM: **ROHIT B. DEO, J.**
DATE: **22nd MARCH, 2022.**

ORAL JUDGMENT:

The petitioner is the original defendant who has suffered decree of possession in Regular Civil Suit 357/2012 instituted by the respondent – landlord. The decree is confirmed in Regular Civil Appeal 46/2014. The concurrent findings are assailed invoking writ and supervisory jurisdiction.

2. Before I advert to the rival contentions, I note that the tenant has denied the title of the landlord, who has purchased the suit property from Smt. Ratnaprabha vide registered sale-deed dated 05.04.2011. The tenant was well aware of the transfer of title in favour of the landlord which is apparent from the fact that the tenant did pay rent to the landlord plaintiff after the execution of the sale-deed till the institution of the suit. Notably, in the affidavit filed on record in lieu of oral examination-in-chief on 26.07.2013 the tenant has again denied the title of the landlord. In this view of the matter, while the court below appear not to have adverted to the issue, it is possible for the landlord to argue that the tenancy stands forfeited.

3. Even *de hors* the aspect of forfeiture of tenancy, having scrutinized the entire evidence and the reasons recorded concurrently, I see no reason to interfere in writ jurisdiction.

4. While Mr. Lule, the learned counsel for the petitioner did invite my attention to that part of the evidence of the landlord which according to him is an admission that she does not need the tenanted shop block for *bona fide* personal need, I am afraid evidence will have to be appreciated holistically. It is true that the

landlord admitted that her entire property admeasures 2500 sq.ft. and that one hall admeasuring 700 sq.ft. is let out to a coaching class, she has denied the suggestion that the said hall was vacant as on the date of the institution of the suit and has asserted that the said hall was in possession of an investment company. The landlord has further clarified in the later part of the deposition that in any event the hall is not suitable and that she is not in need of occupying the hall admeasuring 700 sq.ft. for the Saree Shop which she proposes to start. In essence, what the landlord is contending is that the hall shall be underutilized. The stand of the landlord leads to no inference of *mala fides*. The landlord is certainly the best judge of his need and no court much less the writ Court can possibly advise the landlord on the merits or demerits of his vision or plan unless the need is found to be *mala fide*.

5. I have no hesitation in recording the finding that there is absolutely nothing brought on record either in the cross-examination of the landlord or then in the evidence adduced by the tenant as would impel me to hold that the need of the landlord is not *bona fide* particularly since even according to the tenant the landlord is carrying on the business from her residential

premises. She would be entitled to shift the business to a shop block and cannot be compelled to operate from her residence.

6. In so far as the comparative hardship, on which some submissions are advanced, I note from the evidence adduced by the tenant that there is absolutely no attempt made to demonstrate any hardship or that the tenant did make some effort to search for alternate accommodation, and failed.

7. The concurrent view is unexceptionable. The petition is dismissed.

JUDGE

NSN