

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

WRIT PETITION NO. 4751 OF 2018

Anil s/o Ganpatrao Admane,
Aged about 54 years, Occupation – Service,
R/o Admane House, Near Jankibai
Dharmashala, New Shukrawari, Mahal,
Nagpur.

.... **PETITIONER**

VERSUS

Smt. Meerabai w/o Bisanji Parteki,
Aged – Major, Occupation – Housewife,
R/o In Admane's House, Near Jankibai
Dharmashala, New Shukrawari, Mahal,
Nagpur.

.... **RESPONDENT**

None for the petitioner,
Mr. V.U. Waghmare, Counsel for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 20th APRIL, 2022

ORAL JUDGMENT :

The learned Counsel for the petitioner Mr. A. Shelat and the learned Counsel for the respondent Mr. V.U. Waghmare were heard at length on 07-4-2022. However, the judgment was not dictated since Mr. A. Shelat submitted that the dispute may be amicably settled. It was made clear that the judgment shall be delivered on 20-4-2022, if the parties do not settle the dispute. While Mr. V.U. Waghmare, who

appears on behalf of the respondent is present, Mr. A. Shelat is absent. Mr. V.U. Waghmare states that there is no possibility of amicable settlement.

2. The petitioner instituted Regular Civil Suit 142/2015 under the provisions of the Maharashtra Rent Control Act, 1999 (Rent Act) seeking decree of ejectment and possession of the suit property, which is described in paragraph 7 of the plaint as residential block admeasuring 467.35 square feet.

3. The plaintiff, who shall be hereinafter referred to as the 'landlord', contended that vide sale-deed dated 29-11-2011 he purchased the entire residential property assigned City Survey 239 and House NMC 263 situated at New Shukrawari, Nagpur from Mr. Shubhankar Marothi and others.

4. The landlord then contended that his father was occupying portion of the said house since 1935-36 as tenant and the landlod and his children were born in the said house. The landlord contended that the portion in his occupation is not sufficient and suitable as his children have grown up and, therefore, he needs the tenanted portion for *bona fide* personal use.

The landlord then contended that the defendant, who shall be hereinafter referred to as the 'tenant', is residing in the suit block with her two grown up sons, one of whom is married.

5. Notably, the landlord did not disclose in the suit plaint the total area of the residential building nor the area in his possession.

6. The tenant submitted written statement in response to the suit summons *inter alia* contending that the landlord is the owner of another residential property within the Corporation limit. The averment in the suit plaint that the landlord acquired title under the sale-deed executed by Mr. Shubhankar Marothi and others is denied for want of knowledge.

7. The landlord entered the witness box and the affidavit in lieu of the oral examination-in-chief is a reproduction of the suit averments. The affidavit makes no attempt to disclose the total area of the residential building or then the area occupied by the landlord. All that the affidavit says that the children have grown up. In the cross-examination, the landlord admitted that apart from the tenant, two other tenants Mr. Pawar and Mr. Narekar have vacated the portion in their occupation. The tenant also stepped into the witness box and was

elaborately cross-examined.

8. The trial Court dismissed the suit noting that the landlord did not disclose the material particulars in the plaint. The landlord preferred Regular Civil Appeal 229/2017, which is dismissed by the learned District Judge-13, Nagpur by judgment dated 07-4-2018. Aggrieved by the concurrent views, the landlord is invoking writ and supervisory jurisdiction.

9. The appellate Court has considered the absence of necessary pleadings thus :

*“10. According to the plaintiff, the property is situated in the heart of the city. He further stated that the plaintiff’s children are taking education in the nearby education institutions. He also stated that the portion in his possession is not sufficient for his grown up children. Therefore, according to him, he needs the suit premises for his bona fide and reasonable use. It is true that these contentions are made in plaint as well as in his oral evidence. The Learned Advocate Chauhan for the plaintiff has submitted that therefore, the plaintiff has proved his bona fide need and reasonable requirement. And, in such circumstances, according to him, it was the duty of the defendant to show that his need is malafide. It is true that in the matter of **Anil Bansal vs. Central Bank of India 2003(3) Bom.C.R. 433**, it is held that the tenant to prove that the requirement of the plaintiff is malafide or only desire or not the bonafide and reasonable one. The plaintiff in his pleading and evidence has not stated number of his children, their ages, the area in his possession out of entire house. Moreover, in cross-examination, he admitted that Pawar and Narekar were residing in the said property and they vacated their premises. No doubt, he explained that the house is collapsed*

partially. But he has not stated these facts in his pleading or examination-in-chief. It shows his malafide. He also failed to prove his ownership over the suit premises. In the light of above discussion, it cannot be said that he is in bonafide need and reasonable requirement of suit premises.”

10. In writ jurisdiction, it would be wholly inappropriate and indeed impermissible to interfere with findings of fact, muchless concurrent findings, unless there is grave miscarriage of justice or demonstrable perversity. Having given due consideration to the material on record, I see no error muchless perversity in the reasons recorded. I have scrutinized the plaint and the evidence adduced by the landlord. There is no attempt whatsoever to disclose the necessary particulars which would have enabled the Court to determine whether the need pleaded was *bona fide*. The landlord did not disclose the total area of the residential building which he purchased, nor did he disclose the area in his possession. The landlord further did not disclose the number and ages of the children and the relevant details. I am afraid, that while the landlord is not required to plead and prove an absolute necessity, the need must be genuine and *bona fide* and not ruse or camouflage to seek eviction.

11. I see no reason to interfere in writ jurisdiction.

12. The petition is dismissed.

JUDGE

adgokar