

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

Writ Petition No.245/2023

Ranjit V Ramkishore Pali

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

Court's or Judge's Orders

Mr R.N. Sen, Adv for petitioner.
Mr. A.P. Kalraiya, Adv for respondent.

CORAM : AVINASH G GHAROTE, J.
DATE : 13-02-2023

The petition challenges the judgment dated 09-03-21 passed by the Small Causes Court (pg 58), whereby a decree for eviction has been granted under Sec. 16 (1)(g) of the Maharashtra Rent Control Act, and also the judgment in appeal dated 11-10-22 (pg 36) which upholds the judgment of the Small Causes Court.

2. Mr. Sen, learned Counsel for the petitioner/tenant submits that the impugned judgments are vitiated because of suppression of existence of additional accommodation available to the respondent/landlord at Mankapur which has not been disclosed in the plaint and therefore this suppression itself disentitles the respondent from

decree of eviction. That apart he submits that one of the brothers of the respondent/landlord has already his own house at Jabalpur, where he is residing, therefore the contention that the question of need of accommodation for his brother does not arise at all. The third brother is working in Western Coalfields Limited (WCL) and therefore has no accommodation which also indicates absence of any need. He therefore submits that impugned judgments are required to be quashed and set aside.

3. Mr. Kalriaya, learned Counsel for the respondent/landlord supports the impugned judgments contending that the brother who was working in WCL namely Jugalkishore Pali has retired in 2019, that apart it is contended that the need of the suit premises was also for his son who was residing in the rented premises. It is therefore submitted that the Courts below have rightly come to the conclusion that the respondent/landlord has established his need as he was the best judge of his need.

4. The need which was pleaded was for the respondent as well as the son of his brother Jagdish Pali and also two sons of the respondent, one of whom was of marriageable age at the time of filing of the suit. It cannot be disputed that the landlord is the best judge of his requirements. The respondent in the instant case was admittedly occupying the suit property as described in para 2 of the judgment dated 9-3-21. The need which was pleaded was also for the mother of the respondent who was suffering from paralysis at that point of time and difficulty was being faced, to take her from the first floor to the hospital on account of narrowness of the stair case. It is an unfortunate thing that the mother of the respondent has since passed away consequent to the filing of the suit. The respondent has examined himself and deposed about his need. In the affidavit evidence of respondent he has disclosed regarding the house at Mankapur which was in the name of his deceased mother which according to him as per the wishes of his mother was occupied

by cousin of the respondent and his family. The evidence of the respondent indicates that though substantive cross examination has been done, there is no effective cross examination on this point (pg 115). That apart Jugalkishor Pali, the brother of the plaintiff has also examined himself as PW 2 (pg 117) and deposed that his son was in need of premises as he was staying in rented property. The suit house was ancestral one therefore the brothers of the respondent had equal right of residence therein. The cross examination of PW 2-Jugalkishor indicates that there is no effective cross examination regarding the need as enumerated.

5. The petitioner did not enter the witness box, however, his wife was examined on his behalf. In her cross examination it has been admitted by her that the petitioner has constructed a house at Daldal Seoni, Vidhan Sabha Marg, Mowa, Raipur, which is a single storied house which would indicate that the petitioner is already having his own house. She admits that the respondent has two sons, one of which was residing outside, she is not aware as to what they are doing and for that matter the plea of need in respect of the same.

6. The entire evidence, which has been brought on record indicates that the suit property is a ground plus two structure of which the ground floor is occupied by the petitioner and the second floor having two rooms plus one kitchen and toilet, bath on each floor are occupied by the respondent. Considering the need pleaded on behalf of the respondent as well as brother regarding the requirement of premises, in my considered opinion, the Courts below have rightly held that the respondent has been successful in establishing his bonafide need. Nothing has been brought on record regarding the house at Mankapur so as to discredit the plea of bonafide need by the respondent. The Courts below, in my considered opinion, have rightly assessed the evidence on recording the finding in favour of the respondent/landlord on the ground of bonafide need. I do not see any reason to upset the finding rendered by the Courts below. The petition is therefore without any merits and is dismissed accordingly.

7. At this stage, the learned Counsel for the petitioner, upon instructions, seeks two months time to vacate the suit premises. Though the same

is objected by the respondent, however, considering the nature of the request, it is granted subject to filing of the undertaking under the signature of the petitioner that he will vacate the suit premises within months. The undertaking shall be filed on 14-02-2023 before this Court.

JUDGE