

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

WRIT PETITION NO.575/2019

Jamila Khatoon wd/o Nazar Hussain and others

...Versus...

Khan Mehnaz Sultana Imran Khan

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

Court's or Judge's orders

Mr. M.A. Qureshi, Advocate for petitioners
Mr. R.J. Mirza, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 18/07/2023

1. Heard Mr. Qureshi, learned counsel for the petitioners. The petition challenges the judgment dated 25/04/2016, passed by the learned Trial Court, whereby decree for eviction has been granted against the original defendant under Section 16 (1) (g) of the Maharashtra Rent Control Act, 1999 (for short, "MRC Act", hereinafter). The said decree has been confirmed by the learned Appellate Court by the judgment dated 19/12/2018 (pg.78) dismissing the appeal.

2. Mr. Qureshi, learned counsel for the petitioners submits that there was no relationship of landlord and tenant between the parties hereto and therefore, the finding rendered by the Courts below regarding the Small Causes Court having

jurisdiction to order eviction under the provisions of the MRC Act, according to him, is flawed. He further contends that the original defendant was put in possession of the suit premises under three agreements of sale, dated 15/06/2007 (Exh.61); 08/05/2008 (Exh.62) and 15/01/2009 (Exh.60) and therefore, the status of the original defendant was that of a transferee in possession in part performance, in light of which, the provisions of the MRC Act were clearly not attracted. These are the only contentions advanced.

3. Both the learned Courts below have rendered a concurrent finding of fact that there was a relationship of landlord and tenant between the original defendant and respondent herein. The learned Small Causes Court, for this purpose, has relied upon the evidence of the respondent/plaintiff in this regard and more so, the cross-examination, which indicates that except for a suggestion of denial of the relationship, there is no cross-examination on that count. Most of the cross-examination by the original defendant is about the loan taken by the respondent/plaintiff from the HDFC and the defaults made by her. It is also material to note that the original defendant has not entered into witness box in support of his defence. Thus, in spite of the fact that rent receipts were not placed on record, the learned Small Causes Court has rendered a finding about the existence of a relationship of landlord and tenant, which has been upheld by the learned Appellate Court, which in absence of any rebuttal

evidence, will have to be accepted. The need also is not being questioned.

4. Considering the plea of Mr. Qureshi, learned counsel for the petitioners that the original defendant was a transferee in possession under the aforesaid agreements, he was asked to point out the clause in the agreements at Exh.60 to 62 under which he claimed delivery of possession. He fairly concedes that there was no clause evincing delivery of possession in any of the agreements. The possession of the original defendant, therefore, cannot be related to the agreements at Exhs.60 to 62. It is, therefore, apparent that the petitioner/original defendant has failed to establish his possession as that of a transferee under the aforesaid agreements. That being the only defence, raised by the respondent, in my considered opinion, which is not spelt out by the agreements at Exhs.60 to 62, no interference is called for in the concurrent findings of fact rendered by the Courts below.

5. I, therefore, do not see any reason to interfere in the impugned judgment, considering the limited nature of challenge raised before me. The writ petition is, therefore, dismissed. No order as to costs.