

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

Writ Petition (WP) No. 7626 of 2018

Shri Vishnu S/o Shrihari Ashtikar
Versus
C.P. & Berar Education Society, Nagpur

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

Court's or Judge's Order

Mr. P.V.Vaidya, Advocate for the petitioner
Mr. S.S.Shahane, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.
DATED : 7th FEBRUARY, 2023.

Heard.

2. By way of the present writ petition, decree of eviction on the ground of arrears of rent passed by the learned Judge, Small Causes Court, Nagpur vide judgment and order dated 4th October, 2011 in Regular Civil Suit No. 534 of 2005 and confirmed by the First Appellate Court vide impugned judgment and order dated 3rd November, 2017, is under challenge.

3. The brief facts of the present case are as under:

The respondent/plaintiff is a registered Trust filed a suit for ejectment, possession and recovery

of arrears of rent under the provisions of Section 15(2) & (3) of the Maharashtra Rent Control Act, 1999 in a capacity as the owner of the suit premises i.e. shop block Nos. 11 to 15. Monthly rent was @ 2.25 per square feet per month, the total area is ad-measuring 1227 square feet and the rent comes to Rs.2761/-.

3. It is the case of the plaintiff that the defendant/petitioner has committed default in payment of rent since the month of August, 2001 and further unilaterally reduced the rent from Rs. 2761 to Rs.920.

4. The petitioner/defendant resisted the suit by filing written statement on the ground that the suit is not maintainable as it was filed in a personal capacity and not as the partner of Vidarbha Tractor Company, a partnership firm. The defendant denied the occupation of Shop Block nos. 11 to 15 as tenant and also the rent.

5. The learned trial Court after scrutiny of the oral as well as documentary evidence was pleased to decree the suit in favour of the plaintiff.

6. Defendant feeling aggrieved by the same, carried the said judgment and decree in appeal vide Regular Civil Appeal No. 499 of 2011 which came to be dismissed by confirming the judgment and decree of the trial Court vide the judgment and decree dated 3rd

November, 2017, the same is under challenge in this writ petition.

7. Shri Vaidya, learned counsel for the petitioner submits that both the Courts below have failed to consider that the toilet was demolished and as such the toilet facility was withdrawn by the landlord and therefore the rent was reduced to Rs.920/- per month and accordingly it was paid. It is further argued that the petitioner used to pay the rent on yearly and this arrangement was with understanding and therefore it cannot be said that the petitioner was in arrears of the rent. He therefore submits that both the Courts have committed error in decreeing the suit.

8. Shri Shahane, learned counsel for the respondent points out that the Courts below have categorically held against the petitioner that he failed to prove that Rs.920/- and not Rs.2.25 per square feet per month.

9. He further points out that since the concurrent findings are recorded by both the Courts below, unless there is a perversity, this Court cannot interfere with it. He therefore prays for dismissal of the present writ petition.

10. I have perused the record and the impugned judgments and decree.

11. The learned trial Court in its judgment has given the chart as regards the rent receipt. From the dates of payment of rent, it does not support the submission made by the learned counsel for the petitioner that there was an understanding and arrangement between the parties to pay the rent on yearly basis.

12. The said chart shows that from June 1997 to December 1997 on four occasions, the defendant paid the rent to the plaintiff. Similarly, from January, 1998 to December, 1998 on five different dates the defendant paid the rent to the plaintiff. The same is the case as regards the subsequent period after filing of the suit. I do not therefore find any substance in the contention of the learned counsel for the petitioner that it was agreed between the parties that the defendant shall pay the rent yearly and not monthly.

13. Moving further, as regards the contentions of the learned counsel for the petitioner that the rent was reduced because of withdrawal of toilet facility, it is evident from the concurrent findings recorded by both the Courts below that the petitioner failed to prove that Rs.920/- was the rent and remaining amount was towards the maintenance charges i.e. for providing toilet facility. In absence of any evidence to that effect

produced by the petitioner, both the Courts below have rightly held against the petitioner.

14. Thus, in absence of any perversity or any findings recorded by the Courts below are contrary to the evidence available on record, I do not find any reason to interfere with the decree of eviction granted by the both the Courts below. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]

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