



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

WRIT PETITION NO.1868 OF 2020

Parmeshwardas S/o Hariram Aswani .Vs. Smt. Champabai Wd/o Hazarilal Gupta
(Dead) through LRs

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

Court's or Judge's Order

Shri S.A. Puranik, Advocate for petitioner.

Shri S.D. Deoras, Advocate for respondents.

CORAM : ANIL S. KILOR, J.

DATED : 25/10/2023

1. The judgment and order dated 28.02.2020 passed by the Adhoc District Judge-6, Nagpur in Reg. Civil Appeal No.589 of 2018 dismissing the appeal and confirming the decree of the trial Court dated 17.10.2018 passed in R.C.S. No.415 of 2015 directing the petitioner/defendant to hand over the vacant and peaceful possession of the suit property to the plaintiff/respondent within 30 days from the date of the order, is under challenge in this writ petition.

2. The petitioner is a tenant of the respondents and the suit shop is situated on ground floor, Main Road, Sitaburdi, Nagpur, admeasuring 12 feet x 13 feet.

3. The suit for ejectment, possession, recovery of arrears of rent and mesne profit was filed by the respondent-landlady on the ground that, the petitioner is in arrears of

rent and he is a habitual defaulter in payment of rent. Further, the ejectment was sought on the ground of bonafide need i.e. for the business purpose of grandson of the landlady.

4. The said suit came to be decreed vide judgment and decree dated 17.10.2018 passed by the 2nd Additional Judge, Small Causes Court, Nagpur, directing the defendant to hand over the vacant possession within 30 days.

5. The respondents feeling aggrieved by the said judgment and decree carried an appeal vide Reg. Civil Appeal No.589 of 2018 in the Court of District Judge, Nagpur. The learned lower appellate Court vide impugned judgment and order dated 28.02.2022 dismissed the appeal. Hence, this petition.

6. I have heard the learned counsel for the respective parties.

7. The learned counsel for the petitioner submits that, the learned both the courts below committed error in ignoring the fact that, the landlady and her son owned three different properties and there are many shops which are vacant and which can be used for business purpose of her grandson. It is therefore, submitted that, as the fact about

the vacant shops was suppress by the landlady hence, she is not entitled for any relief in the said suit.

8. It is further submitted that, in a cross-examination, the grandson has admitted the fact that, yet he has not decided any business which he intending to start in the suit shop. It is therefore, submitted that, this fact is sufficient to show the bonafide need is fancy one and there is no real bonafide need in existence. He accordingly prays for quashment of both the judgments and decree passed by the Small Causes Court as well as by the learned District Judge, Nagpur.

9. On the other hand, learned counsel for the respondents submits that, no document has been brought on record by the petitioner namely sanction plan or any other document to show that there are shops in any of the building owned by the respondent-landlady or her son. It is submitted that, no evidence is brought on record to show that there are vacant shops in any of the building owned by them. He, therefore, submits that, in absence of any evidence, the case of the petitioner cannot be accepted.

10. He further submits that, both the Courts below have considered an appreciated the oral as well as the documentary evidence to arrive at a conclusion that the landlady needs the suit shops for bonafide occupation i.e.

for the business of her grandson. He therefore submits that, there is no perversity in the finding recorded by the learned both the Courts below.

11. In light of rival submission of the parties, I have perused the record and the impugned judgment and decree.

12. From the impugned judgment and decree, it is evident that, the first appellate Court has observed that no case is made out by the landlady under Section 15 of the Maharashtra Rent Control Act, 1999 i.e. as regards arrears of land and habitual defaulter. Accordingly, the learned lower appellate Court held in favour of the petitioner on the point of arrears of rent. As the landlady has not challenged the said finding the only issue remains to be decided is relating to the bonafide need.

13. As regards the bonafide need, the plaintiff has made pleading to that effect in paragraph 3 of the plaint, which read thus:

“3) That, the defendant is doing business in suit shop block known as ‘Asuram Scooters’. In the suit shop block there is stair case towards eastern side. The said stair case is using to go to upper floor by the plaintiff or her tenants. The plaintiff’s grand son Harshit Harikishan Gupta, aged about 24 years, is unemployed, who passed B.B.A. exam. The plaintiff’s grandson is having knowledge of business and hence he requires

the said shop for his bonafide need. There is no other shop premises vacant to start his business i.e. plaintiff's grandson. The said suit shop is situated on Main Pt. Malviya Road, Sitaburdi, Nagpur and the said locality is a commercial locality, it is very beneficial to start the business of the plaintiff's grandson. The plaintiff have another house situated on Main Road Sitabuldi, Nagpur, but in that house plaintiff's son is running Mishtan Bhandar and upper portion is used for godown and one tenant. There is no space on ground floor in that house to start new business for her grandson. Hence the plaintiff wants to vacate the said suit shop which is situated to the main road. The plaintiff requested the defendant so many times to vacate the suit shop for her grandson to start his business. The defendant is agreed to vacate the suit shop but still today the defendant is killing time to vacate the same. So the plaintiff has given registered notice to the defendant on 24.08.2015 and requested the defendant to vacate the said shop for her grandson's bonafide need. Though the defendant is received the said notice, on 26.08.2015, but failed to vacate the said shop upto 25.11.2015. The plaintiff is terminated his tenancy from 26.11.2015 and does not want to continue as a tenant in the said shop. The plaintiff's grandson have knowledge about the business and he is competent to start his business and the said shop is very useful to start his business and hence the plaintiff is entitled to get possession of suit shop u/s 16(1)(g) of Maharashtra Rent Control Act."

14. The oral evidence of the plaintiff is on the same line and in cross-examination, it is pertinent to note that nothing has been brought on record contrary to the same.

15. The grandson of the plaintiff has also entered into the witness box who has stated his educational qualification and the intention to start the business.

16. As far as the admission of the grandson that, he has not yet decided the business which he wants to start in the suit shop, will not help to the petitioner to say that the need is fancy one and not real one for the reason that the grandson in his cross-examination further, stated that after studying the market, he will decide the nature of business. In the circumstances, the bonafide need of the landlady cannot be doubted.

17. In the evidence of the tenant/petitioner, he has admitted the fact that, he has not brought any documentary evidence to establish his case that there is a building owned by the son of landlady and in that building, there are twenty shops, out of which, ten shops are vacant.

18. The similar suggestion was given to the landlady and her grandson. In their cross-examination, they denied for it.

19. In the circumstances, except oral evidence of the tenant as regards the ownership of twenty shops and out of which, ten shops are vacant nothing has been brought on record to establish the said fact. The tenant has not brought on record any sanction plan to show that there are twenty shops in the building owned by either landlady or her son.

20. In absence of any such evidence, the case of the petitioner/tenant cannot be accepted.

21. In the circumstances, as the plaintiff has proved the bonafide need, I do not find any error committed by the learned lower appellate Court in maintaining the decree on the ground of bonafide need.

22. As far as hardship is concerned, it is not the case of the tenant that in the said locality, the alternate accommodation is not available. It is also not the case of the petitioner that, he tried to find out the alternate accommodation but he could not get the same.

23. In the circumstances, even on the point of hardship, I do not find any error committed by the learned Courts below in holding against the petitioner.

24. As there is no merit in the present writ petition, the writ petition is **dismissed**.

JUDGE