



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

CIVIL REVISION APPLICATION (CRA) NO.51 OF 2023

[Sandeep Kisan Mareshwar .Vrs. Kishor Hukhimchand Agrawal and Ors.]

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

Court's or Judge's order

Mr N. B. Kalwaghe, Advocate for Applicant.

Mr S. A. Mohta, Advocate for Non-Applicant Nos.1 to 5.

CORAM : ANIL L. PANSARE, J.

DATE : 19th OCTOBER 2023.

1. By present Revision, the Applicant is seeking to quash and set aside the judgment and decree dated 13th February, 2023 passed by the Principal District Judge, Buldhana in Regular Civil Appeal No.15 of 2021.

2. By the aforesaid judgment, the Principal District Judge has upheld the judgment and decree dated 5th January, 2021 passed by the learned Joint Civil Judge Junior Division, Buldhana in Regular Civil Suit No.18 of 2018.

3. The Applicant is a tenant and the Non-Applicants are landlord. The parties herein shall be referred to as tenant and landlord respectively. The landlord had filed a suit for recovery of arrears of rent and possession of suit property. The Courts below have found that the tenant was in arrears and therefore, decreed the suit. The suit was also decreed on the ground of *bona fide* need of landlord.

4. The learned Counsel for Applicant/tenant has raised two grounds. One is that the notice, issued under Section 106 of the Transfer of Property Act, 1882 by the landlord to the tenant, has not been signed by their Advocate. He has invited my attention to the notice at Exh-20 issued by the Counsel for the landlord. Admittedly, there is no signature of the Advocate on the last page. The next contention is that the suit ought to have been filed under Section 16(1)(i) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “Act of 1999”). The suit, however, has been filed under Section 16(1)(g). The learned Counsel for tenant has, by referring to Sub-section (6) of Section 16, argued that no decree for eviction could be passed on the ground specified in Clause (i) or (j) of Sub-section (1), unless the Court records satisfaction that the landlord has necessary funds for the purpose of erection of the new building and the landlord gives undertaking that each tenant shall be accommodated in new building. These provisions read thus:

“16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of Section 25, a landlord shall be entitled to recover possession of any premises if the Court is satisfied-

(a)

(b)

(c)

(d)

(e)

(f)

(g) *that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purpose of the trust;*

(h)

(i) *that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished;*

(j) *that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the demolition thereof and erection or raising of a floor or floors on such terrace;*

(k)

(l)

(m)

(n)

(2)

(3)

(4)

(5)

(6) No decree for eviction shall be passed on the ground specified in clause (i) or (j) of sub-section (1), unless the court is satisfied.

(7)

(8)

(9)

(10)”

5. The Counsel for the tenant has then invited my attention to the notice at Exh-23 given by the landlord to the Municipal Council, Buldana, stating therein that the suit premises are in dilapidated condition and require demolition. The landlord requested the Council to demolish the old structure and to permit him to construct a new structure. Taking benefit of the said notice, the learned Counsel contends that the suit would lie under Section 16(1)(g) and not under Section 16(1)(i).

6. The learned Counsel for the landlord has rightly countered both the contentions. As regards first contention, the learned Counsel submits that the notice Exh-20 produced by the tenant was in fact the office copy and not the copy that has been received by the tenant. He has invited my attention to the acknowledgment at Exh-21, which indicates that the notice issued in favour of tenant has been received and signed by one Sarika Mareshwar, the wife of the brother of the tenant. In the cross-examination of the tenant, he admits that Sarika is wife of his brother. He further admits

that his brother and brother's wife were residing with him. He has then deposed that the address on Exh-21 is the same, where he resided. Accordingly, the Counsel for landlord submits that the notice has, thus, been proved to have been served upon the tenant. The tenant has intentionally not produced the same notice, which was signed by the Advocate.

7. I would endorse the aforesaid contentions for the reason that the evidence is writ large as regards the receipt of the notice. In the circumstances, the tenant was duty bound to place on record the copy of the notice, which he has received, to argue that the notice does not bear signature of the landlord or his Advocate. Having conceded the said notice, the tenant has withheld the best evidence and therefore should suffer consequences of adverse inference against him.

8. So far as the issue of filing of suit under Section 16(1)(i) is concerned, the learned Counsel for landlord submits that the suit has been filed on 3rd February, 2018 and the notice pointed out by the other side is dated 11th December, 2018. Accordingly, he has rightly argued that on the date of filing of suit, there was no case to receive possession of the suit property on the ground of dilapidated condition. He therefore further correct in submitting that in absence thereof, there arises no question of proof of having

funds to erect the building or to file undertaking as required under Section 16(6) of the Act 1999.

9. The suit has been filed for arrears of rent and possession on the ground of *bona fide* need of the property. The Courts below have found merit in the said submissions. Both the Courts below have recorded the findings that the tenant was in arrears of rent and that the landlord is in *bona fide* need of the suit premises.

10. Considering the above status, I do not find any merit in the application. The civil revision application is rejected.

JUDGE