



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

WRIT PETITION NO.2436 OF 2020

Sau. Shakuntalabai Anantrao Tale .Vs. Shri Panjabrao S/o Kisanrao Sontakke

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

Court's or Judge's Order

Shri N.P. Lambat, Advocate for petitioner.

Shri J.J. Chandurkar, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 23/08/2023

1. Heard.
2. The denial of decree of eviction to the petitioner-landlord against the tenant, is the subject matter of the present writ petition.
3. The petitioner-landlord purchased the suit property vide registered sale-deed dated 09.05.1975 and it was let out to the father of the respondent on monthly rent for residential purpose.
4. After the death of father of the respondent, the mother of the respondent and the respondent were the tenants and after the death of mother of the respondent, the respondent is the sole tenant.

5. The petitioner filed a suit for eviction bearing Small Cause Civil Suit No.3 of 2013 under Section 16(1) (a) (b) (j) (k) (h) of the Maharashtra Rent Control Act, 1999, which came to be dismissed by the 3rd Jt. Civil Judge Sr. Division, Amravati.

6. In the said suit, the respondent/tenant did not participate and filed his written statement and accordingly, the Court proceeded the matter without written statement.

7. On rejection of the suit, an appeal was filed by the landlord in the Court of District Judge, Amravati in Regular Civil Appeal No.125 of 2014, the same came to be dismissed. Hence, this petition.

8. The learned counsel for the petitioner has pointed out that, none of the grounds on which the eviction was sought was considered by the learned trial Court or the learned lower Appellate Court. It is submitted that, the plaintiff has examined three witnesses including herself and filed ample evidence on record in support of the case of the plaintiff. However, the learned trial Court without discussing any oral as well as documentary evidence, dismissed the suit.

9. It is submitted that, even there was no rebuttal on behalf of the tenant to any of the ground mentioned in

the suit for eviction, by filing written statement. He, therefore, submits that, the learned trial Court has decided the suit in a cryptic manner and despite the same, it has been upheld by the learned lower appellate Court and therefore, the judgment and decree passed by the trial Court as well as by the learned lower Appellate Court are liable to be quashed and set aside.

10. Shri Chandurkar, learned counsel for the respondent-tenant submits that, this was the third suit filed by the plaintiff and earlier suit on similar ground filed by the plaintiff was withdrawn without mentioning any reason and without obtaining any liberty and therefore, the suit is not maintainable. As far as the fact that, no written statement was filed, Shri Chandurkar, learned counsel for the respondent is not disputing the said fact.

11. After going through the record and on perusal of the impugned judgment and decree, it is evident that, the learned trial Court while dismissing the suit has held against the petitioner in a cryptic manner, as it can be seen from the observation and the finding recorded by the learned trial Court. The learned trial Court has not referred to any of the oral or documentary evidence produced by the plaintiff and there are no findings recorded for holding against the plaintiff and not accepting the oral as well as documentary evidence produced by the plaintiff.

12. Though there is a finding recorded by the learned trial Court in relation to every ground for eviction however, there are no reasons recorded to the effect that, why such grounds were not found to be justifiable for grant of decree of eviction.

13. Moreover, the learned trial Court has not considered the fact that, the earlier suit was filed and it was withdrawn without seeking liberty and what would be the effect of such withdrawal on subsequent suit.

14. The similar error has been committed by the learned lower appellate Court while upholding the judgment and decree passed by the trial Court. In that view of the matter, I am of the opinion that, the present matter needs to be remanded back to the trial Court for deciding the suit afresh after giving full and complete opportunity to both the parties including allowing the defendant to file written statement or to lead evidence if he so desire.

15. Accordingly, I pass the following order:

- i) The writ petition is **partly allowed**.
- ii) The impugned judgment and order dated 01.03.2017 passed by the District Judge-2, Amravati in Reg. Civil Appeal No.125 of 2014

and impugned judgment and order dated 27.06.2014 passed by the 3rd Jt. Civil Judge Senior Division, Amravati in Small Cause Suit No.03 of 2013, are hereby quashed and set aside.

- iii) The small cause Suit 03 of 2013 be restored to its original number and thereupon, the learned trial Court shall decide the same afresh after giving full and complete opportunity as observed herein above.
- iv) The learned trial Court shall decide the suit within **one year** from the date of filing of the certified copy.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE