



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

MISC. CIVIL APPLICATION NO.1030 OF 2023

Maharashtra State Co-op. Cotton Growers Marketing Federation Ltd., Nagpur
through its authorized officer **Vs.** M/s B.S.S. Associates

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

Court's or Judge's Order

Shri C.V. Kale, Advocate for applicant.

Shri A.G. Baheti, Adv. h/f Shri R.M. Bhangde, Adv. for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 01/12/2023

1. This is an application seeking review of the judgment dated 21.03.2023, on the following grounds:

a) This Court in paragraph 11 has observed that, the alternate property owned by the landlord was rented out by the landlord on 01.12.2009. Whereas, the suit was filed on 23.09.2009 and as such, on the date of filing of the suit, the alternate premises was vacant and this fact was suppressed by the landlord in the suit filed against the petitioner for eviction.

It is submitted that despite the said fact, this Court has observed that, no evidence is brought on record by the tenant to show that before 01.12.2009, the said premises was vacant. It is submitted that, it is the burden on the landlord to plead and prove the said fact.

b) The declaration submitted by the tenant relating to the said alternate premises to the Municipal Corporation stating that he took possession on 01.12.2009, is sufficient to presume that before 01.10.2009 the said premises was vacant.

2. After going through the record, I do not find any merit in the submission of the learned counsel for the applicant for the reason that, on the basis of presumption and in absence of any cogent evidence that on the date of filing of the suit i.e. on 23.09.2009 some other premises was in possession of the landlord or it was vacant and it was rented out subsequently, it is not safe to say that the landlord suppressed the certain facts.

3. Moreover, if it is the case of the tenant that on the date of filing of the suit against him the plaintiff/landlord was in possession of some alternate premises, the burden lies on the tenant to prove the said fact.

4. Even while, considering the application for review, a specific query was put to the learned counsel for the applicant to show a single evidence that on the date of filing of the suit i.e. on 23.09.2009, the said alternate premises was vacant and it was in possession of the landlord,

except the declaration given by the tenant of the said alternate premises to the Municipal Corporation, no document has been pointed out by the learned counsel for the applicant.

5. In the circumstances, I do not find any error committed by this Court in dismissing the writ petition. Accordingly, no case is made out by the applicant for review.

Hence, the application is **rejected**.

JUDGE