



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

Writ Petition (WP) No. 2887 of 2023

Smt. Shaikh Karima Wd/o Shaikh Mohd. Through Special Power of
Attorney Holder Shaikh Ashpak S/o Shaikh Mohammad

Versus

Rajesh Yeshwantrao Mandape

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

Court's or Judge's Order

Shri Naquid Mirza, Advocate for the petitioner.

Shri Masood Shareef, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 20th SEPTEMBER, 2023.

Heard.

2. The decree of eviction on the ground of *bona fide* need was granted by the learned Small Causes Court, Nagpur in Regular Civil Suit No. 85 of 2017 vide judgment and decree dated 17th February, 2021 and it was upheld by the learned District Judge-18, Nagpur vide impugned judgment and decree dated 19th September, 2022 in Regular Civil Appeal No. 40 of 2021. The same are under challenge in this writ petition.

3. The learned counsel for the petitioner has raised challenge to both the judgments and decree on the ground that both the Courts failed to consider the

compliance of Section 16(2) of the Maharashtra Rent Control Act, 1999 which relates to hardship.

4. It is further submitted that though the alternate accommodation is available with the landlord that has not been considered by both the Courts below. For this purpose, he has drawn attention of this Court to the cross examination of the plaintiff to point that the plaintiff is the owner of 3000 square feet of the area and there are four shops. In support of his contention, the learned counsel for the petitioner has placed reliance on the judgment of the case of *Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkune and another*¹.

5. On the other hand, learned counsel for the respondent-landlord strongly opposed the present writ petition and prays for dismissal of the same on the ground that no illegality or perversity has been committed by both the Courts below.

6. In light of rival contentions of the parties, I have perused the impugned judgments and decrees.

7. No doubt in the cross-examination of the plaintiff, it has come on record that the plaintiff is having area of 3000 square feet and there are four shop blocks. However, this is not sufficient to hold in favour of the petitioner that there is alternate accommodation

1 AIR 1999 SC 2226

available for the landlord, for the reason that the petitioner has not come up with the case that the said shops are vacant and it is available for the landlord for occupation.

8. Moreover, it is evident from the record that the petitioner has not filed any written statement and thereby making any pleadings as regards hardship.

9. Thus, in absence of any pleadings regarding hardship, the case of the petitioner that both the Courts below have failed to consider the case of the petitioner as regards hardship under Section 16(2) of the Rent Act, 1999, cannot be accepted and considered and accordingly such submission is rejected.

10. As far as the law laid down in the case of *Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkune and another* (supra), there is no dispute about the same.

11. Hence, considering the evidence led in this case and the facts of the case, I do not find any perversity committed by both the Courts below in decreeing the suit for eviction.

12. In the circumstances, I do not find any merit in the present writ petition. Accordingly, it is dismissed.

[ANIL S. KILOR, J.]