

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

WRIT PETITION NO.3504 OF 2018

(MAHARASHTRA STATE COOP. COTTON GROWERS MARKETING FEDERATION LTD...VS.. M/S.
 B.S.S. ASSOCIATES)

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

Court's or Judge's orders

 Shri C.V.Kale, Advocate for Petitioner.
 None for the Respondent.

CORAM : ANIL S. KILOR, J.
DATED : MARCH 21, 2023.

1. Heard learned counsel for the petitioner. None for the respondent, though served.

2. In this writ petition the judgment and decree dated 14/02/2018 passed by District Judge-12, Nagpur dismissing the appeal and confirming the judgment and decree dated 24/04/2014 passed by the Additional Judge, Small Causes Court, Nagpur decreeing the suit filed by the respondent for ejectment, possession and mesne profit, is under challenge.

The brief facts of the present case are as under:

3. The respondent filed a suit for ejectment, possession and mesne profit. It is the case of the respondent/ plaintiff that the plaintiff is a partnership firm and the defendant/ petitioner is Maharashtra State Cooperative Cotton Growers and Marketing Federation Ltd. It is the further case of the respondent that the petitioner is a tenant in the property described in paragraph No.2 of the plaint. The suit property was earlier owned by the members of Chhabra family who had executed Lease Agreement dated

15/01/2002 in favour of the defendant society. The said lease was fixed for a period commencing from 01/06/2000 and ending on 31/05/2003 and thereafter another lease was executed for the period from 01/06/2003 till 31/05/2006 and thereafter there is no extension of the lease.

4. The suit was filed on the ground that it is required for bonafide occupation i.e. for expansion of the business of the landlord firm. The suit was decreed by recording the findings in favour of the landlord as regards bonafide need and reasonable requirement of the suit premises.

5. The said judgment and decree passed by the trial Court dated 24/04/2014 was carried in an appeal, which came to be dismissed vide impugned judgment and decree dated 14/02/2018, the same is the subject matter of the present writ petition.

6. Shri Kale, learned counsel for the petitioner submits that despite the fact that the plaintiff owned the property on Central Avenue on the date of filing of the suit, the said fact was suppressed and thereby the plaintiff committed fraud. It is submitted that it is a settled law that if a party has not approached the Court with clean hands, in such cases it will be the duty of the Court to non-suit the landlord on the said ground.

7. It is submitted that it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant. It is submitted that as the respondent/plaintiff has suppressed the

fact that on the date of filing of the suit he was owning the property on Central Avenue, the suit needs to be dismissed. For this purpose, he has placed reliance on the judgment of the Coordinate bench of this Court at Principal Seat in the case of *Tarachand Vs. Durgashankar*, reported in **2004 (Supp) Bom. C.R. 333**.

8. He further argues that the question of greater hardship was not considered by both the Courts below in right perspective after taking into consideration the case of the petitioner. It is submitted that the evidence led by the petitioner was not considered and accordingly the findings recorded by both the Courts below on the point of comparative hardship are erroneous.

9. In the light of the submissions made by the learned counsel for the petitioner, I have perused the record, the impugned judgments and decrees and the authorities cited by the petitioner.

10. From the record, it is evident that the petitioner is a tenant of the respondent. It has also come on record that after getting knowledge about the property owned by the landlord on Central Avenue, the applications seeking permission to file additional evidence on record and for permission to produce documents on record, were moved. Both the applications at Exhs. 15 and 38 were allowed by the learned lower appellate Court in view of the fact that the plaintiff admitted those documents.

11. Accordingly, the plaintiff has admitted that on the date of filing of the suit he was owning a property on Central Avenue and it was sold in the year 2015. It has also come on record that

the document in respect of the assessment of tax shows that the property was rented out on 01/12/2009 and not on the date of filing of the said suit in the month of September 2009. However, no document has been produced by the petitioner to show that prior to 01/12/2009 the property on Central Avenue was in possession of the respondent and not given to anyone on rent. The record further shows that the said property was sold out on 24/04/2015.

12. This Court in the case of *Tarachand* (supra) has held thus :

“8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that in spite of those acquisitions and ownership of other premises, the requirement which is pressed into service against the tenant would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bonafide and reasonable.”

13. In the case of *Sara Rauf* (supra) this Court has held thus :

“9. Looking at the overall facts, it is not even the case of the petitioner-tenant, that all four premises mentioned in the affidavit dated 30th November, 2002 were in fact capable of being utilised for the residential purpose when the suit was filed and until the first appeal was, finally decided. In fact, it is clear from the observations made by the courts below that these premises were not available for occupation and were involved in the litigation. It is true, that the duty of the court is to see whether, in the facts and circumstances of the case, landlord has obtained the decree by playing fraud on the court. Similarly,

to see whether a litigant who comes to the court, must come with clean hands and if his case is based on falsehood, he has no right to seek any relief from the court or even to approach the court as observed by the Supreme Court in S.P.Chengalvaraya Naidu's case(supra). In the facts and circumstances of the case in hand, it cannot be said that the decree was obtained by fraud on the court.

10. For the purpose of determining whether the requirement of the landlord of the premises in question is reasonable and bonafide what is necessary to be considered is not whether the landlord has juridically in possession of other premises, but, whether they were available to him for occupation so that he cannot be said to be in need of the premises in question. Merely because the landlord is the owner of other premises in possession of other tenants and are not capable of being utilised for the requirement pressed into service such premises cannot be taken into account for negating the need of the landlord for the premises in question.” (Emphasis supplied)

14. Thus, from the above referred observations, it is evident that merely because the landlord is owner of other premises in possession of other tenant and are not capable of being requirement pressed into service such premises cannot be taken into account for negating the need of the landlord for the premises in question. If the landlord is not in possession of the other premises though he may be the owner of several other premises, it cannot be said that other premises are capable of being utilized by the landlord for requirement pressed into service.

15. Considering the above referred observations, in the present case, though the petitioner succeeded in pointing out that on the date of filing of the suit, the landlord owned the property on

Central Avenue, however, he could succeed in pointing out that the said property was in possession of the landlord on the date of filing of the suit.

16. The Tax Assessment Sheet is in respect of the tenant Tirupati Urban Cooperative Bank and it shows that the said bank was paying rent to the plaintiff w.e.f. 01/12/2009. However, no evidence is brought on record by the petitioner to establish that prior to Tirupati Urban Cooperative Bank there was no other tenant and the said premises was in possession of the landlord.

17. In the circumstances, I do not find any perversity in the findings recorded by the learned lower appellate Court in rejecting the submission of the petitioner that there is suppression of fact and no decree on the ground of bonafide requirement can be passed in favour of the landlord.

18. As far as 'comparative hardship' is concerned, both the Courts below have recorded concurrent finding of fact after examining and scrutinizing the evidence available on record. Nothing has been pointed out that the findings recorded by the learned Courts below on the greater hardship, are perverse and not based on evidence. In the circumstances, I do not find any merit as regards the submission made in respect of greater hardship.

Accordingly, the writ petition is **dismissed**. No order as to costs.