



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 WRIT PETITION NO.14005 OF 2023

Kunal Atmaram Gaikwad

Age: 28 yrs, Occu: Business,

R/o. Bhuvneshwari Colony, Nandurbar,

Tq. & Dist. Nandurbar.

.. PETITIONER

VERSUS

- 1] Kamalbai Pramod @ Baban Tamboli,
Age: 72 years, Occ: Household.
- 2] Dinesh Pramod @ Baban Tamboli,
Age: 52 years, Occu : Service
- 3] Manoj Pramod @ Baban Tamboli,
Age: 45 years, Occu : Service
All R/o. Pimpalner, Tq.Sakri,
Dist. Nandurbar.
- 4] Manisha Vasudev Bari,
Age: 42 years, Occu : Household,
R/o. Pura Galli, near Warwade Hall,
Shirpur Warwade, Tq.Shirpur,
Dist. Dhule.
- 5] Sitaram Shivram Gaikwad (died)
Through his L.r.
- 5(1) Bhagwan Sitaram Gaikwad (died)
Through his L.Rs.
- 5(1)-A Jagdish Bhagwan Gaikwad (died)
- 5(1)-B Ramdas Sitaram Gaikwad,
Age: 60 years, Occu : Business,
Bhuvneshwari Colony, Nandurbar,

Tq. & Dist. Nandurbar.

RESPONDENTS

...
Mr.P.P.Wangikar, Advocate holding for Mr.R.V.Gore,
Advocate for the petitioner.
Mr.R.R.Sancheti, Advocate for the respondents.

...
CORAM : ARUN R. PEDNEKER, J.

DATE : 18.01.2024

P.C. :

1] By the present Writ Petition, the petitioner is challenging the order dated 20.09.2023 below Exh.23 in Regular Darkhast No.23/2022 pending before the 2nd Joint Civil Judge Junior Division, Nandurbar whereby Civil Judge Junior Division was pleased to allow the application filed by the decree holder for rejection of application Exh.18 for non-disclosure of cause of action as per Order VII Rule 11 (a) of the Civil Procedure Code filed by the present petitioner.

Brief facts leading to filing the present Writ Petition are as under:

2] The respondent nos. 1 to 4 are original plaintiffs, who filed Regular Civil suit No.91 of 2005 against respondent no.5 for recovery of possession of suit property i.e. one of the rooms of house property measuring 8 x 16 ft. out of CTS No.437/C. It is contention of the plaintiffs that

suit property was given on rent to the defendant / respondent no.5 by deceased Jagganath Tamboli @ Rs.55/- per month for running the business. Defendant failed to pay rent for 16 months in 2005. Plaintiff no.3 was intending to start his business in the suit property. Therefore, the plaintiffs prayed for recovery of possession of suit property on two grounds, viz., habitual defaulter in payment of rent and for bona fide need of the suit premises.

3] The defendant / respondent no.5 opposed the suit claim by filing written statement and thereby denied all the material averment in the plaint. The defendant pleaded that his entire family is dependent upon the income derived from his business and therefore, prayed for dismissal of the suit with cost.

4] On 16.07.2023, the trial Court has allowed the suit claim and said order of the trial Court was challenged before the Principal District Judge, Nandurbar by the defendant / respondent no.5 to 5 (1)-B by way of filing Regular Civil Appeal No.44/2013. The Appellate Court dismissed the said Appeal by order dated 23.11.2021. Thereafter, the original defendants i.e. present respondent no.5 to 5 (1) B filed revision petition before this Court under Section 115 of CPC by filing Civil Revision Application No.14/2022. The High Court dismissed the said Revision petition by order dated 14.07.2023.

5] In the meantime, the original decree holders i.e. respondent nos. 1 to 4 had filed Regular Darkhast No.23/2022 against defendant i.e. respondent no.5 to 5 (1)-B before Civil Judge Junior Division, Nandurbar in respect of the judgment and decree dated 16.07.2023 passed by the trial Court. The present petitioner filed application below Exh.18 in Regular Darkhast No.23/2022 wherein he has stated that he is a son of Atmaram Gaikwad who is brother of original defendant Ramdas Sitram Gaikwad. It is further contended that the father of petitioner and original tenant Sitaram Gaikwad were running shop in suit property. After death of Atmaram Gaikwad, the petitioner is running said shop being son in the suit property. He is in possession of suit property. The plaintiff / respondent nos.1 to 4 had not made party to father of petitioner in the said proceeding though other paternal uncles of the petitioner were made party in the proceeding. Therefore, the said decree is not binding upon the petitioner. Therefore, he prayed that the Court shall proceed to adjudicate upon the application in accordance with Order 21 Rule 97 of Civil Procedure Code.

6] On 31.07.2023, the original decree holder / respondent nos.1 to 4 had filed application for rejection of application below Exh.18 for non disclosure of cause of action as per the provisions of Order-VII Rule 11 (a) of the Code of Civil Procedure. In the said application below

Exh.23, decree holders / respondent nos. 1 to 4 had submitted that the plaintiff has filed Regular Civil Suit No.91 of 2005 against original tenant Sitaram Shivram Gaikwad for possession. During pendency of suit, Sitaram died and hence his legal heirs were brought on record. The legal heirs filed written statement and admitted that they are only legal heirs of Sitaram Gaikwad. Appeal against decree of trial Court filed by defendants, wherein, application below Exh.39 was filed under Section 5 (11) (c) of the Maharashtra Rent Control Act, 1999 r/w. Order XLI Rules 23, 25 Section 151 of the Civil Procedure Code. The said application was rejected but that order was not challenged by defendants. Regular Civil Appeal No.44 of 2023 was dismissed by learned Appellate Court. The said judgment was confirmed in Civil Revision Application No.14 of 2022 by Court. It is further stated that the judgment debtors in collusion with Objector have filed application below Exh.18. Objector has no concern with the suit property. Therefore, no cause of action arose to objector to file application below Exh.18.

7] On 20.09.2023, the trial Court has allowed the application below Exh.23 filed by decree holder mainly on the ground that the provisions of Order VII Rule 11 of CPC would apply in objection application filed in execution proceeding. The trial Court further held that the judgment debtors in collusion with objector have filed application

below Exh.18 only with an intention to deprive the decree holders from getting fruits of decree passed in their favour. Against the order dated 20.09.2023, the present Writ Petition is filed.

8] Perusal of the orders and record of the proceedings would indicate that the present petitioner is son of Atmaram Gaikwad, who is brother of original defendant Ramdas Sitram Gaikwad. It is the contention of the petitioner that after death of Atmaram Gaikwad, the petitioner is running the said shop being son in the suit property and he is in possession of the said suit property.

9] However, the learned counsel for the respondent has produced on record copy of order dated 14th July, 2023 passed in Civil Revision Application No.14 of 2022 wherein mesne profits were directed to be paid by the legal heirs of Bhagwan Gaikwad and submissions canvassed before this Court that, the mesne profits should have not been directed against one of the legal heirs of the property, and that other legal heirs ought to have been made parties to the same. However, the Appellate Court in paragraph no.23 has specifically observed that Bhagwan and Ramdas were arraigned as the legal heirs of the original tenant and after appearance they filed written statement. In the written statement, in the opening paragraph itself it is pleaded, they are the legal heirs of the original tenant. In addition, the

original tenant had opportunity to contend that all the family members are running business with him at the time of giving reply, but no such case was advanced at that time, which was the first opportunity for the defendants to lay foundation for their defence. It was also noticed that in cross examination the defendant categorically admitted that the defendant received the suit premises from the original landlord i.e. Jagannath. Thus, it was not necessary for plaintiffs to have arraigned any other legal heirs of deceased Jagannath merely to satisfy the untenable demand of the defendant.

10] Perusal of the above order of this Court would indicate that tenancy was inherited by the brothers of the petitioner and they were running the suit shop after demise of their father. Thereafter, the present Writ Petition is filed at the instance of the petitioner / objector claiming that he is in possession of the property by virtue of being the legal heirs of the original tenant. The decree against the original tenant so also the legal heirs as contemplated under law has attained finality. Thus, objection raised cannot be sustained and the trial Court has rightly dismissed the application of the objector so also there was no cause in favour of the present petitioner.

12] In view of the same, the order passed by the Civil Judge Junior Division, Nandurbar is upheld. No case is

made out to interfere in the writ jurisdiction of this Court.
Hence, the present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

DDC