



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

WRIT PETITION NO.89 OF 2024

Shri Naresh S/o Sunderlal Nagpal through LRs .Vs. Shri Dinesh S/o Prakash Gujjar

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

Court's or Judge's Order

Shri A. Shelat, Advocate for petitioners.

Shri A.C. Dharmadhikari, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 15/02/2024

1. This is a landlord tenant dispute filed by an unsuccessful tenant before both the Courts below and who suffered a decree for eviction.

2. The only ground raised in the present writ petition is that, three applications filed by the petitioners at Exhibit Nos.124, 126 and 131 for permission to file certain documents on record, were not decided before the final judgment passed in appeal, though it was observed by the learned first Appellate Court that, the same will be decided at the time of final disposal of the appeal.

3. Admittedly, none of the applications are under Order 41 Rule 21 of the Code of Civil Procedure (CPC) or there is no prayer for permission to lead additional evidence.

4. In absence of any such prayer or relief sought by the petitioners, even if the applications were allowed by the first Appellate Court, it would have of no benefit to the petitioner for the reason that, the said documents can not be read in evidence unless those are proved and for that purpose, permission to lead evidence under Order 41 Rule 27 of the CPC, is required, which prayer was never made

5. Hence, even if no orders are passed on such applications, it would not make any difference as far as the ultimate conclusion of the first Appellate Court is concerned.

6. It is interesting to note here that, after the final judgment, the review application was filed by the petitioner. However, in the said application for review, these grounds were not raised or agitated before the first Appellate Court.

7. Thus, it appears that, the present petition is filed with an ulterior motive to delay the execution of decree.

8. In that view of the matter, I do not find any merit in the present writ petition. Accordingly, it is **dismissed**.

9. At this stage, Shri Shelat, learned counsel for the petitioners seeks time on instructions of his client to vacate the premises. It is submitted that, it is a commercial establishment and therefore, six months time may be granted to vacate it.

10. Shri Dharmadhikari, learned counsel for the respondent opposes the said request.

11. However, considering the fact that, the petitioners are ready to give undertaking in writing on affidavit that, he will vacate the premises within six months from today, I am of the opinion that, no prejudice will be caused to the respondent if such time is granted. Accordingly, **six months** time is granted to the petitioner to vacate the suit premises and to hand over the possession to the respondent subject to condition of filing of undertaking in writing on affidavit and to pay occupation charges for this period as per the rate fixed by the first Appellate Court within **two weeks** from today.

JUDGE