



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4947 OF 2023

(Santosh Baburao Gaikwad Vs. Smt. Rohini Punit Grover & Anr.)

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

Court's or Judge's orders.

Shri S.B. Mohta, Counsel for the petitioner.
Shri R.M. Sharma, Counsel for the respondents.

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CORAM : ANIL L. PANSARE, J.
OCTOBER 21, 2024

The petitioner – defendant is aggrieved by order dated 16/11/2022 passed below Exh. 14 by the Judge, Small Causes Court, Nagpur, in Regular Civil Suit No. 234/2019, thereby directing the petitioner to deposit arrears of rent and to continue to deposit regular rent, pending suit. The Court further ordered that the petitioner shall not be permitted to withdraw the amount, so deposited, until the decision in the suit, being Special Civil Suit No. 626/2016, filed by the petitioner for specific performance of contract dated 28/6/2016.

2] Having heard both sides and having gone through the material placed before me, it appears that there is no dispute that prior to entering into agreement to sell in respect of the suit premises, the petitioner was a tenant and the respondents – plaintiffs were the landlords. By agreement dated 28/6/2016, the petitioner alleges that the parties have entered into an agreement to sell the disputed premises for Rs.26,51,000/-. The parties have, by express terms, terminated the agreement of

tenancy. The petitioner has paid an amount of Rs.5,51,000/- to the respondents of which Rs.51,000/- only has been paid through cheque.

3] The petitioner filed suit for specific performance of the aforesaid contract. The respondents, by filing written statement, have disputed the agreement to sell. According to the respondents, the agreement is a forged document. The learned Counsel for the respondents submits that even the handwriting expert's report would support the respondents' case.

4] The respondents, thereafter, in the year 2019, filed a suit for recovery of possession and arrears of rent. Pending suit, the respondents filed application under Order 15A of the Code of Civil Procedure, 1908 (for short 'the Code') seeking directions to the petitioner to deposit arrears of rent and to continue to pay the amount of rent.

5] The trial Court has, after going through the relevant material, held that by entering into agreement to sell, the petitioner will not become owner of the property or that the tenancy would not come to an end. The Court held that *prima facie*, there exists relationship of landlord-tenant between the parties. Accordingly, the Court directed the petitioner to deposit arrears of rent and to continue to deposit monthly rent.

6] As such, the trial Court has not assigned a valid reason to come to the conclusion that there exists relationship of landlord-tenant between the parties. The fact, however, remains that the agreement to sell, entered

into by and between the parties, is seriously disputed by the respondents.

7] In the circumstances, the argument put forth by the petitioner's Counsel that the parties have, by entering into contract, terminated the relationship of landlord-tenant, cannot be said to be a valid argument, unless execution of agreement is proved. Had the respondents admitted execution of contract, one may argue that by entering into contract, the parties have terminated the relationship of landlord-tenant.

8] The respondents' Counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of *S.M. Asif Vs. Virender Kumar Bajaj [(2015) 9 SCC 287]*, wherein similar such plea was taken by the tenant that the parties entered into an agreement to sell. In doing so, however, the tenant, in the suit for eviction filed by the landlord, admitted the relationship of tenancy and the period of lease agreement, but resisted the landlord's claim by setting up a defence of entering into agreement to sell. In the aforesaid background, the Supreme Court, while dealing with the scope of Order XII Rule 6 of the Code, held that when the issue of tenancy arises in the suit filed by the tenant for specific performance of contract, mere admission of relationship of landlord-tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 of the Code. The Supreme Court, however, considering the stand taken by the parties, directed the trial Court to decide the suit afresh with directions to the tenant to pay arrears of rent

and amount of Rs.1,00,000/- per month as compensation for use and occupation of the suit premises.

9] In the present case, the petitioner has not set up a defence in the suit for eviction filed by the respondents but has himself initiated the proceedings before the trial Court by filing suit for specific performance of contract. The petitioner has not admitted the relationship of tenancy, rather has put up a specific case that by entering into contract, the parties have terminated the tenancy.

10] The landlords, on the other hand, have disputed the agreement to sell and in support, they relied upon the handwriting expert's opinion.

11] I am informed that since the handwriting expert is not appearing as witness, the respondents have filed application to send the agreement to sell to the State Examiner of the documents. The trial Court has allowed the application and referred the documents to the handwriting expert. The said order is under challenge in Writ Petition No. 5904/2024, wherein the Court has stayed the said order.

12] Put altogether, one cannot really say that the petitioner has admitted the relationship of tenancy. At the same time, there is no admission by the landlords that they have entered into an agreement to sell the disputed property.

13] In the circumstances, the learned Counsel for the respondents is right in contending that no

interference is called for in the impugned order, which only directs the petitioner to deposit the amount of arrears of rent in the Court and further to deposit monthly rent with a rider that the landlords will not be permitted to withdraw the amount until the decision in the suit filed by the petitioner. He has further rightly pointed out that if at all the suit filed by the petitioner is decreed, the amount, so deposited by him, will be adjusted as payment of consideration in terms of the agreement to sell entered into by and between the parties.

14] Thus, it appears that the trial Court has taken into account interest of both the parties and accordingly passed the order. No interference, therefore, is called for.

15] The petition is accordingly dismissed. No costs.

16] At this stage, the learned Counsel for the petitioner, submits that the trial Court has directed the petitioner to deposit the amount of arrears of rent within six months from the date of passing of order. He seeks three months time to comply the order.

17] Time is granted. However, if the amount of arrears of rent, accruing till date, is not deposited within three months from today, i.e., on or before 31/1/2025, the petitioner shall deposit, in addition to regular rent, an amount of Rs.10,000/- per month as damages for the period from 1/2/2025 and the additional amount so deposited shall not be adjusted towards payment of

consideration amount of the alleged sale of the property, in the event the suit filed by the petitioner is decreed in his favour.

18] Needless to say that if the petitioner fails to deposit the amount, as directed by this Court, within three months, the remedy available to the respondents under Order 15A of the Code regarding striking of defence and other remedies, as are available to the landlords, shall not be affected.

(ANIL L. PANSARE, J.)

Sumit