



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

WRIT PETITION NO.4217/2023

Shri Rakesh s/o Narayan Ghosekar,
Aged about 34 years, Occ. Business,
r/o Maharashtra Auto Deal Centre,
C/o J. M. Sonbarse, Plot No. 383,
Ganesh Nagar, Nagpur.

....PETITIONER

...V E R S U S...

Shri Jawaharlal s/o Manoharlal
Sonbarse, aged 45 years, Occ. Service,
r/o Ganeshnagar, Nagpur.

...RESPONDENT

Dr. Anjan De, Advocate for petitioner.
Ms Shruti Najbile, Advocate for respondent.

CORAM:- ANIL L. PANSARE, J.
DATED :- 03.08.2024

ORAL JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally
with consent of learned counsel for the parties.

Heard Dr. Anjan De, learned counsel for the petitioner
and Ms Shruti Najbile, learned counsel for the respondent.

2. The petitioner is Tenant and respondent is Landlord.
The Landlord filed suit for ejectment, possession and recovery of
arrears of rent. The Small Causes Court, Nagpur vide judgment
and decree dated 11.12.2014, decreed the suit. The Tenant
challenged the decree before Ad hoc District Judge, Nagpur in

Regular Civil Appeal No.107/2013. The Appellate Court vide judgment dated 21.03.2023, dismissed the appeal and thus upheld the decree passed by the Trial Court.

3. The suit proceeds on the ground that the Landlord owns four shops situated on the ground floor of the premises. The Tenant occupy one out of four shops. In cross-examination, the Tenant has brought on record that the suit building consists of two storey and that some tenants have vacated the premises. It is further brought on record that three out of four shops were vacated by the tenants and were in possession of the Landlord.

4. Counsel for the Tenant submits that this subsequent development has been not brought on record by the Landlord by way of amendment in the plaint and, therefore, the Tenant had no opportunity to deal with those pleadings, which ought to have been brought on record.

5. The petitioner has placed reliance upon two judgments. The first is of the coordinate bench of this Court in the case of *Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff, 2004 (Supp) BCR 333*, wherein the Court held that it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which may be 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. The Court then has referred to the case of the Apex Court in *S. P. Chengal Varaya Naidu (Dead) by L.R.s V. Jagannath, 1994 1 SCC 1.* The Apex Court observed that duty is cast upon the Plaintiff to disclose all the facts and to come to Court with true case and prove it by true evidence. The Apex Court has further observed that deliberate deception with the desire of securing something by taking unfair advantage of another, is a deception in order to gain by another's loss, is a cheating intended to get an advantage. The Apex Court further observed that non disclosure of all the material and relevant facts at the trial tantamount to playing fraud on the Court.

6. As could be seen, duty is cast upon the plaintiff (Landlord in the present case) to disclose to the Court, all the relevant facts in the pleadings and in his evidence as regards ownership of other premises which may be capable of being utilized for the requirement pressed into service. In the present case, requirement pressed in service is that the shop is required to establish office for legal practice.

7. Here, counsel for the respondent submits that at the relevant time, viz. when the suit was filed, all the shops i.e. four shops were rented and accordingly, the facts were so pleaded and disclosed in the plaint as well. She submits that, therefore, the Landlord cannot be blamed of not disclosing all the facts at the time of filing the suit.

8. This aspect will have to be considered in the light of the second judgment that has been cited by counsel for the petitioner. In the case of *Hasmat Rai .Vs. Raghunath Prasad, 1981 (3) SCC 103*, the Supreme Court has held that when an action is brought by the landlord under Rent Restriction Act for eviction on the ground of personal requirement, his need must not only be shown to exist at the date of the suit, but must exist on the date of the appellate decree, or the date when a higher court deals with the matter. The Apex Court further held that during the progress and passage of proceeding from court to court if subsequent events occur which if noticed would non suit the plaintiff, the court has to examine and evaluate the same and mould the decree accordingly.

9. It is thus clear that the Landlord has to show that bona fide need to start his profession at one out of four shops was not

only existing at the time of filing of the suit but continued to exist at the appeal stage as well.

10. In the present case, the subsequent development has been not brought on record by the Landlord. Subsequent development has been brought on record by the Tenant, that too by way of cross-examination of Landlord. In that sense, the Landlord carries a blame of not disclosing true status of the properties available at his disposal pending suit. Withholding such a vital fact can be said to be an act done to get advantage on the other side. This is how the judgment in the case of *Tarachand* (supra) would play an important role where the Court ultimately has held that person so withholding the fact would be guilty of fraud on the Court as well as on the opposite party and can be summarily thrown out at any stage of litigation.

11. Counsel for the Landlord submits that though subsequent facts were not pleaded, it were brought on record in the cross-examination of Landlord. Both the Courts below have applied their mind to the subsequent development and have rendered concurrent findings in favour of the Landlord as regards his bona fide requirement to commence the office. This Court, therefore, should be slow in upsetting the concurrent finding.

12. I need not touch this aspect when the issue is settled in terms of the judgment noted above. The question is whether the Landlord has disclosed true and correct status at the stage of filing suit and subsequent thereto as and when the development occurred. Further, the development is of such a nature that would require the Landlord to not only plead but also prove that despite three out of four shops having been vacated and having been taken possession of, the Landlord, would still require the fourth shop to open his office.

13. Having not disclosed these facts in the pleadings and having not proved the same by leading evidence in chief-examination, merely because the subsequent development has been brought on record in the cross-examination would not be sufficient to hold that all the material were available before the Trial Court to adjudicate the issue. Rather by bringing subsequent development on record in the cross-examination, the Tenant has exposed the Landlord and thus established that his testimony is not trustworthy. Once the witness loses credibility, his testimony cannot be relied upon. Despite such status, both the Courts below have taken aid of the Landlord's evidence to render finding in his favour, which would run contrary to the law of evidence.

14. In the light of the above, the judgments passed by both the Courts below are not sustainable. The petition is accordingly allowed.

Judgment and decree dated 11.12.2014, passed by Small Causes Court, Nagpur in Regular Civil Suit No. 272/2003 and judgment and decree dated 21.03.2023 passed by District Judge, Nagpur in Regular Civil Appeal No.102/2015 are quashed and set aside.

15. At this stage, the Counsel for the Landlord submits that the Landlord is in need of the premises under question even today and his need is bona fide. If that be so, the Landlord may pursue his demand by filing separate suit, if so desired.

Rule is made absolute in the above terms. No order as to costs.

(Anil L. Pansare, J.)

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