



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

Writ Petition (WP) No. 3667 of 2021

Samuel Ranjan Timothy

Versus

Anil Nagoraoji Pund

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

Court's or Judge's Order

Shri M.V.Rai, Advocate for the petitioner.

Shri N.B.Rathod, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 14th FEBRUARY, 2024.

Heard.

2. In this writ petition, the order dated 22nd July, 2021 passed by the learned District Judge-13, Nagpur in Regular Civil Appeal No. 464 of 2018, upholding the judgment and decree dated 31st July, 2018 passed by the Small Causes Court, Nagpur in Regular Civil Suit No. 28 of 2013, is under challenge.

3. This is a landlord tenant dispute wherein landlord succeeded in both the Courts below in getting the decree of eviction against the petitioner/tenant on the ground of bonafide need as well as arrears of rent.

4. The brief facts of the present case is that, the petitioner is the tenant of the suit flat no. B-001, house no. 6321, situated at Ward no. 68, Plot no.1, Khasra no. 99/1, Yashwardhan Sankul, Hajaripahad, Nagpur on monthly rent of Rs.4500/-. The leave and licence agreement was executed by the respondent in favour of the petitioner.

5. It is contended that, the suit of the plaintiff-respondent is based on alleged leave and licence agreement which is not registered and hence it is hit by the provisions of Indian Registration Act 1908 which provides mandatory registration particularly under Section 55(1) of the Maharashtra Rent Control Act, 1999 (in short hereinafter referred as 'Rent Control Act, 1999').

6. It is submitted that, the respondent has suppressed the material fact, during the proceeding of the suit. It is contended that, it is evident from the possession of notice issued by Arvind Sahakari Bank Limited, Hingna Road, Digdoh, Nagpur against the respondent that the suit premises were under attachment in the loan proceeding going on between the bank and the respondent under Securitization and Reconstruction of Finance Assets and Enforcement of Security Interest Act, 2002 and under the provisions of 13(2)(12) read

with Rule of the Security Interest Enforcement Rules 2002. The authorized officer of the said bank issued demand notice calling upon the borrower/respondent to pay the amount mentioned in the notice being 31,71,622/- within 60 days from the receipt of the notice. The said notice is dated 06.09.2017 and thereafter on 19.04.2018, the Arvind Sahakari Bank Limited, has put the suit flat on auction by publishing the said auction for sale through news paper “Dainik Bhaskar” and “Sakal” dated 25th April, 2018.

7. I have heard learned counsel for the respective parties.

8. Shri Rai, learned counsel for the petitioner while arguing on the correctness and validity of the impugned judgment and decree dated 22nd July, 2021 passed by the District Judge, Nagpur in Regular Civil Appeal No. 464 of 2018 submits that, the whole case is based on leave and license, which is not a registered one and which goes to the root of the jurisdiction. Thus, he submits that in absence of registered leave and license, both the Courts below ought not to have passed the decree. In support of his submission, he has placed reliance on the Coordinate Bench of this Court in the case of Mohd. Shakil Mohd Yunus Vs. Chandrabali

Ramai Gupta (D) through legal heirs and others¹ and Anwar Noormohammed Pirani Vs. Santosh Gajanan Naskulwar².

9. On the other hand, learned counsel for the respondent strongly opposed the present writ petition and submits that even if the documents Exhibits 24, 25 and 26 are ignored which are leave and license, the petitioner has admitted that he is the tenant and even in the cross-examination of the plaintiff there was no suggestion given by the petitioner that he is not a tenant. It is submitted that in absence of such registered document, the Court can consider the contentions to arrive at a conclusion in respect of the relations of the landlord and tenant.

10. The Coordinate Bench of this Court in the case of *Anwar Noormohammed Pirani Vs. Santosh Gajanan Naskulwar* (supra) has held that for non registration, the agreement could not be relied upon, however, in that case the contentions of the tenant regarding the terms and conditions subject to which the suit property had been given to him by the landlord, were to prevail, unless proved otherwise.

11. In the matter at hand, the defence of the petitioner was struck down for non-payment of rent,

1 2014(5) Mh.L.J.206

2 2020(6) Mh.L.J.257

therefore, even if the leave and licence is not a registered one as per Section 55(2) of the Rent Control Act, 1999, the decree cannot be denied. In the circumstances, I do not find any error committed by the learned District Judge-13, Nagpur, in dismissing the Regular Civil Appeal No. 464 of 2018 filed by the petitioner.

12. In the circumstances, as there is no merit in the present writ petition, the writ petition is dismissed.

[ANIL S. KILOR, J.]