



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

WRIT PETITION NO. 8189 OF 2023

(Nirdoshkumar s/o Radheshyam Chaurasia Vs. M/s. Saree Enterprises & Anr.)

WITH WRIT PETITION NO. 5453 OF 2023

(M/s. Saree Enterprises & Anr. Vs. Shri Nirdoshkumar s/o Radheshyam Chaurasia)

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

Court's or Judge's orders.

WP 8189/2023

Shri Arjun Raoka, Counsel for the petitioner.
Shri S.V. Purohit, Counsel for the respondents.

WP 5453/2023

Shri S.V. Purohit, Counsel for the petitioners.
Shri V.V. Bhangde, Counsel for the respondent.

.....

CORAM : ANIL L. PANSARE, J.
OCTOBER 24, 2024

Writ Petition No. 5453/2023

The petitioner – tenant is aggrieved by order dated 2/5/2023 passed by the District Judge – 18, Nagpur and order dated 16/3/2023 passed by the Adhoc District Judge – 1 & Additional Sessions Judge, Nagpur, in Regular Civil Appeal No. 472/2016. The learned Counsel for the petitioners has restricted his challenge to order dated 2/5/2023 passed by the First Appellate Court.

2] The First Appellate Court held that the respondent – landlord has established, by pleading and evidence, that the suit property is reasonably and bonafidely required by him for occupation/business of his son, and accordingly decreed the suit. The decree passed by the trial Court, dismissing the suit, was accordingly quashed and set aside.

3] Having heard both sides at length, the question that arises for consideration is whether the respondent – landlord has proved that the suit premise is reasonably and bonafidely required by him.

4] The learned Counsel for the petitioners has invited my attention to the cross-examination of the respondent. He admitted that after vacating the suit premise, he intends to give it to tenant on higher rent. Accordingly, it is argued that this admission is so fatal that the requirement of the suit property, for bonafide reasons, is destroyed.

5] As against, the learned Counsel for the respondent argued that this admission has been given inadvertently and cannot be read in isolation.

6] True it is that evidence has to be looked into in its entirety. At the same time, law on evidence is well settled that if, in cross-examination, an unequivocal admission is brought on record, the same will carry weightage, while assessing the evidence.

7] In the present case, the admission goes to the root of the case inasmuch as the respondent filed a suit with a specific plea that the suit property is required by him for running business of his son. If the foundation is such, one cannot expect contrary evidence on this point in cross-examination, and if such evidence is brought on record, the same cannot be ignored. If the admission is inadvertent, the respondent's Counsel ought to have clarified the same in re-examination. When enquired as to why was re-examination not done, no good reason has been assigned by the respondent's Counsel.

8] In the circumstances, when the admission in cross-examination destroys the very foundation of filing suit, I need not go into other details to find answer to this crucial issue. Most importantly, the Courts below have not even considered the effect of this vital admission given by the respondent in cross-examination.

9] There is yet another material brought on record in cross-examination, which would disentitle the respondent to get decree in his favour.

10] The respondent has admitted that on rear side of the building, new construction has been done, which includes ground floor, mezzanine floor and first floor. This fact, however, has been not incorporated in pleading, either when the suit was filed or by way of amendment (if the construction was made pending suit). In absence of pleading, the respondent could not have led evidence on this point.

11] On this point, the petitioners' Counsel has invited my attention to the judgment passed by a Co-ordinate Bench of this Court in the case of *Tarachand Hassaram Shamdasani Vs. Durgashankar G. Shroff & Others [2004(Supp.) Bom.C.R. 333]*, wherein the Court commented upon the obligations of the landlord in the following manner :

“8. To my mind, however, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises which were capable of being utilized for the requirement pressed into service in the suit filed against the tenant and to further disclose and explain that inspite of those acquisition and ownership of other premises, the requirement which is pressed into service against the tenant

would still survive. It is only then the landlord would be entitled to invoke this ground and would succeed in establishing his need to be bona fide and reasonable.”

12] Thus, it is obligatory for the landlord to disclose in the pleadings and in his evidence the fact that he owns other premises, which are 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 acquisition and ownership of other premises, the requirement of *bona fide* need will survive. The Court further held that only upon discharging such obligation, the landlord would be entitled to invoke the ground of *bona fide* need and can succeed in establishing such need.

13] In the present case, admittedly, the respondent has not disclosed about the construction made on rear side. Having failed to disclose this vital fact, he failed to discharge the obligation on availability of other premises at his disposal. The learned Counsel for the respondent failed to show that the aforesaid fact was pleaded either in the plaint or amended plaint. In absence of such pleadings, the respondent could not have tendered evidence on this point.

14] The First Appellate Court, however, considered such evidence and held that since the petitioners did not avail alternate accommodation, greater hardship will be caused to the respondent. The First Appellate Court failed to recognize the established principles of law that in absence of pleadings, party

cannot lead evidence thereon. Even otherwise, the petitioners were running Saree Centre from the suit premises and in that context, the respondent is under obligation to prove that if business of Saree could be run from alternate accommodation, why can't business of readymade garments be carried on from the said premises. This is one of the reasons why is landlord under obligation to disclose in the pleadings the availability of all properties at his disposal and to make out case of *bona fide* need of a particular shop/premises.

15] Thus, the judgment of the First Appellate Court suffers from non-application of mind. The judgment impugned ignores the settled principles of law and is, thus, unsustainable.

16] The writ petition is accordingly allowed. Judgment and order dated 2/5/2023 passed by the District Judge – 18, Nagpur in Regular Civil Appeal No. 472/2016, is quashed and set aside. Order dated 13/6/2016 passed by the Judge, Small Causes Court, Nagpur, in Regular Civil Suit No. 133/2007, is restored.

17] The writ petition is disposed of in aforesaid terms. No order as to costs.

Writ Petition No. 8189/2023

18] Result of this petition is dependent on the decision in Writ Petition No. 5453/2023. It is so because the petitioner – landlord is seeking modification and enhancing the order incorporating a decree for eviction and enquiry into mesne profit, as sought in the suit.

19] It appears from the impugned judgment that the First Appellate Court, though decreed the suit, has not incorporated order granting decree for eviction and enquiry into mesne profit.

20] As stated earlier, this modification is/was dependent on the decision in Writ Petition No. 5453/2023 filed by the tenant. If the petition filed by the tenant is dismissed, the landlord will be entitled to seek decree of eviction and enquiry into mesne profit. If the petition filed by the tenant is allowed, the suit will stand dismissed. In that eventuality, there arises no question of passing decree of eviction.

21] Writ Petition No. 5453/2023 has been allowed and, therefore, there arises no question of entertaining the present writ petition. The learned Counsel for the petitioner – landlord, however, insisted to permit him to make certain submissions. He was informed that since Writ Petition No. 5453/2023 has been allowed, the petition filed by the landlord would become infructuous. Despite such status, the learned Counsel intended to put forth certain submissions. Permission was accordingly granted by putting the learned Counsel to notice that heavy costs will be imposed if it is found that judicial time has been unnecessarily wasted.

22] The learned Counsel for the petitioner, despite the aforesaid caution, submits that a document was filed before the trial Court stating therein that by notice, the landlord has informed the tenant that on the rear side of the building, there is an alternate accommodation. He further submits that the tenant

refused to accept the alternate accommodation. When enquired as to where is this fact mentioned in pleading, the learned Counsel submits that there is no pleading to that effect. Thus, an argument is made to consider evidence without pleadings. In fact, this point has been considered in the order passed in Writ Petition No. 5453/2023. It has been categorically held that the landlord failed to disclose about the construction made on rear side and he failed to discharge his burden. Despite such status, the Appellate Court relied upon the evidence to hold that the tenant refuse to alternate accommodation and, thus, more hardship will be caused to the landlord. This finding is held perverse being based on inadmissible evidence. Despite such finding and despite caution, the learned Counsel continued his argument knowing fully well that its a futile exercise. By doing so, he has wasted judicial time.

23] The writ petition is accordingly dismissed with costs of Rs.50,000/- which shall be deposited by the petitioner within a period of four weeks from today with the High Court Bar Association Library, Nagpur.

(ANIL L. PANSARE, J.)

Sumit