



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

Writ Petition No.7034/2016

Waman V Yogesh

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

Court's or Judge's orders

Mr. P.A. Gupta, Advocate h/f Mr. Abhijeet Khare, Advocate for petitioner.  
Mr. R.A. Biranware, Advocate h/f Mr. O.K. Masurke, Advocate for respondent.

**CORAM : N.R. Borkar, J.**

**DATE : 04-12-2024.**

This petition takes exception to the judgment and decree dated 11-08-2016 passed by the learned Adhoc District Judge-3, Nagpur in Regular Civil Appeal No.38/2013.

2. The petitioner-landlord had filed a suit for eviction and possession against the respondent – tenant. The suit was filed on the ground of *bona fide* need. The learned trial Court by judgment and decree dated 25-10-2012 directed the respondent to hand over the possession of the suit premises to the petitioner. By the impugned judgment and decree, the learned first Appellate Court has allowed the appeal filed by the respondent against the judgment and decree passed by the learned trial Court. As a consequence of it, the learned first Appellate Court has dismissed the suit filed by the petitioner.

3. I have heard the learned Counsel for the petitioner-landlord and the learned Counsel for the respondent-tenant.

4. According to the petitioner, he was working with private security agency. However, due to non-availability of work with the said agency, since 2004, it stopped providing work to him. According to the petitioner, thus he needs the suit premises to open the grocery shop to earn his livelihood.

5. The learned trial Court on the basis of the evidence on record has recorded the following findings :-

*"19. In cross examination the defendant admitted that, since last 10 years, plaintiff is jobless who was serving in "Security Agency". Plaintiff have two shop blocks out of which one is in the possession of defendant and in another shop block, plaintiff's son running his business of Steel by name and style as "Nimbalkar Steel". He also admitted that to obtain the shop on rent now they have to pay as a security deposit Rs.2,00,000/- He also admitted that after receipt of notice, he paid the rent to the plaintiff. Thus bona fide need and reasonable requirement put forth by plaintiff came to be admitted by the defendant in cross-examination."*

6. The learned first Appellate Court has, however, reversed the decree passed by the trial Court by recording the following findings :-

*"18. From the evidence, as discussed above, it is clear that the plaintiff is aged about 60 years. The plaintiff is having one son who is unmarried. His son is residing in the same house. Though plaintiff deposing that, his son did not take care of plaintiff and his wife, however, he failed to adduce any corroborative evidence in respect of the said fact. The another contention of plaintiff is that, defendant carrying on business on the plot of Chirkut*

Deshmukh (D.W.2) under the name and style as "J.B. Steel and Gift Center". Except the evidence of Kishor Mate (P.W.2), there is no corroboration either orally or documentary to substantiate the same. It is to be note here that, for carrying a business, a licence issued from the Shop and Establishment Department is necessary. Plaintiff has not taken any pains to place on record the copy of licence (Gumasta licence) issued from Shops and Establishment Department. No any notice issued to defendant for production of document i.e. Gumasta Licence. Similarly, no any electricity bill or tax receipt placed on record to show that, the defendant carrying the business from the alternate premises as alleged by Chirkut Deshmukh on lease. Witness Kishor Mate (P.W.2) testified in cross-examination that, he did not see the defendant in the said shop."

*(emphasis supplied)*

7. By order dated 20.9.2022, this Court had allowed the amendment application filed by the petitioner and permitted him to incorporate the following averments.

"7(A) During the pendency of instant writ petition the petitioner has found out that the respondent purchased immovable property i.e. House No. 372/1, Plot No.1, together with construction standing thereon admeasuring 1625 sq. ft. (105.96 sq. mtrs.) vide sale deed dt.31/12/2010. A copy of Sale Deed dated 31/12/2010 is marked and annexed hereto as Annexure-6. It is further learnt by the petitioner that the respondent has constructed a house on the said property along with shop blocks on the front side. The respondent is running his business from these shop blocks, which are owned by him. Thus, it can be seen that respondent has already secured alternate place of business for himself and his contention that the business which he runs from the tenanted premises is his only source of earning is a false contention."

*(emphasis supplied)*

8. The respondent has not disputed the above averments. The respondent has suppressed the above facts from the trial Court and the appellate Court. In the teeth of the above facts, the finding recorded by the first Appellate Court cannot be allowed to stand.

9. Considering the overall facts and circumstances, the judgment and decree passed by the learned first Appellate Court will have to be set aside. In the result, the following order is passed:

### **ORDER**

(a) The impugned judgment and decree passed by the learned first Appellate Court is set aside and the judgment and decree passed by the learned trial Court is restored.

(b) The petition is allowed in above terms.

( N.R. Borkar, J.)