



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

WRIT PETITION NO.1364 OF 2020

Dr. Sanjay S/o. Mahadeorao Rajhans
Aged about 40 years, Occ. :- Physiotherapist
R/o. 63, Vidhya Vihar Colony, Ring Road,
Ranapratap-nagar, Nagpur. **PETITIONER**

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

1. Tushar S/o Late Manohar Patil,
since deceased-
Through his Legal Representatives :
 - 1-(a) Smt. Mamta Wd/o Tushar Patil
Aged about 52 years, Occ :- Teacher
R/o. Plot No. 11-A, Satyam Vihar,
Navneet Society, Narendra-nagar,
Nagpur – 440 015.
 - 1-(b) Ritanshu S/o Tushar Patil
Aged 24 years, Occ.:- Private
R/o. C/o Smt. Mamta Patil
Plot No. 11-A, Satyam Vihar,
Navneet Society, Narendra-nagar,
Nagpur – 440 015.
2. Parag S/o Late Manohar Patil
Aged – Major, Occ.:- Not known
R/o 134, Farmland, Chetna Apartment,
Ramdaspath, Nagpur – 440 010. **RESPONDENTS**

Mr. S. D. Mishra, Advocate for Petitioner.
Mr. S. V. Bhutada, Advocate for Respondent No.1.

CORAM: **R. M. JOSHI, J.**
DATE: **7th JULY, 2025.**

ORAL JUDGMENT:

1. By consent of both sides heard finally at the stage of admission.

2. Unsuccessful defendant no.1 in Regular Civil Suit No.382/2009 takes exception to the judgment and decree dated 01.03.2017 passed therein directing eviction of defendants from the suit premises and confirmation thereof in appeal being Regular Civil Appeal No.181/2017. Thus, the concurrent findings recorded by the trial Court as well as Appellate Court are sought to be challenged in this petition.

3. Petitioner is a Doctor and runs Physiotherapy Centre in the tenanted premises which originally belonged to late Manohar Patil who died on 19.05.2004. It is specific case of the petitioner that though the agreement between the parties is named and styled as 'Leave and Licence Agreement', in fact it was a perpetual tenancy. According to the petitioner, respondent nos.1 and 2 are the sons of original landlord on his death they became joint owners of the suit premises. It is further claimed that by virtue of will executed by Manohar Patil, both respondents have been given right to receive 50% rent amount equally. It is further

claim of the petitioner that respondent no.2 who is the joint landlord and having separate family issued demand letter of his half share of rent on 12.05.2005 and accordingly the petitioner has started to tender half share of rent to respondent no.2. Due to which respondent no.1 got annoyed and issued legal notice dated 05.07.2005 alleging default in payment of rent. Respondent no.1 issued another legal notice dated 24.03.2007 intimating that the earlier notice stood withdrawn and the petitioner was called upon to vacate the suit premises by end of April, 2007.

4. On 19.11.2009 respondent no.1 filed suit for eviction of the petitioner on the ground of default in payment of rent. The cause of action spelt out in the said suit was the first legal notice of year 2005 which was withdrawn by subsequent notice dated 24.03.2007. Petitioner/original defendant no.1 contested the suit and filed written statement. During the course of the trial plaintiff amended the plaint to claim the possession of the suit premises on the ground of *bona fide* need.

5. Before the trial Court both parties led their respective evidence. The learned Judge, Small Causes Court, Nagpur passed judgment and decree dated 01.03.2017 directing eviction of defendants from the suit premises. The petitioner being aggrieved

by the said judgment and decree preferred appeal Regular Civil Appeal No.181/2017 before the District Court, Nagpur. By judgment dated 23.10.2019 appeal came to be dismissed with variation on the award of interest on the arrears of rent. Hence, this petition.

6. The petitioner has raised issues in this petition firstly as to whether the suit based upon the legal notice which was admittedly withdrawn by issuing subsequent legal notice was maintainable in law. Secondly respondent no.1 is a joint landlord of the premises along with respondent no.2 could have independently filed a suit for eviction for joining the other respondent as party to the suit.

7. Learned Counsel for the petitioner submits that from the contents of the plaint the cause of action spelt out for filing of the suit is notice dated 05.07.2005. According to him, since the said notice is admittedly withdrawn by subsequent notice dated 24.03.2007, there was no cause of action for filing suit for eviction of the defendants from the suit premises. It is further submission that the suit by itself under the provisions of the Rent Act for eviction was not maintainable on the ground of *bona fide* requirement in view of case of the plaintiff about the agreement

between the plaintiff and defendants is 'leave and licence agreement'. It is his submission by relying upon the relevant provisions of the Act that the ground of *bona fide* requirement is not available in case of licensee. It is his further submission that on these two counts the suit was not maintainable and hence deserves to be dismissed. With regard to the decree passed by the trial Court on ground of *bona fide* requirement, it is his submission that in view of the judgment of this Court in case of ***Subhash K. Thakkar v. Rushad Dinshaw and others* 2005(5) Mh.L.J. 353**, unless the joint owner of the property is made party, no decree of eviction could be passed on that ground. Essentially on these and other submission interference is sought in the impugned judgment and decree.

8. Learned Counsel for respondent no.1 at the outset submits that the plaintiff has never raised issue of maintainability of the suit before the Small Causes Court in the written statement and hence it is now not open for the petitioner to raise the said issue. It is further argued that unlike provisions of the Transfer of Property Act, a suit for eviction is not be preceded by any legal notice. According to him, there is no embargo to file the suit against the tenant for eviction even without issuance of notice.

Thus, it is his contention that the cause of action mentioned in the plaint has no bearing on the maintainability of the suit. According to him, the cause of action is non payment of the rent/arrears of rent and *bona fide* need of landlord of the suit premises. Respondent to the judgment cited in case of Subhash it is submitted that from the material evidence on record it can be said that the respondent no.1 was the sole owner in respect of the suit premises which can be ascertained from Will Exhibit-128. It is his submission that even if it is accepted for the sake of argument that 50% rent was to be shared by the brother i.e. respondent nos.1 and 2, it could only be held to be an internal arrangement between them and that it will not make the other brother landlord of the premises. It is submission that in this petition too respondent no.2 has not raised the claim of being landlord of the suit premises. It is submitted that it is the case of the defendants that the agreement between the parties and that in fact it is a perpetual tenancy. He drew attention of the Court to the findings recorded by the trial Court in paragraph 16 thereof of the judgment to submit that it is held that it is a tenancy and not a leave and licence. Thus, according to him there is no reason for causing interference in the judgment and decree impugned.

9. At the outset it needs to be recorded that jurisdiction of a writ court is limited to ascertain whether the judgment/order impugned are perverse. It is only when perversity is shown or the order has led to miscarriage of justice, such interference is permissible. Herein this case, there are concurrent findings of facts by both Courts. Keeping in mind these facts and position of law, the submission of rival parties are considered in the light of pleading and evidence on record.

10. There is no dispute about the fact that the plaintiff is landlord of the suit premises. Admittedly the suit premises and the building wherein the premises is situated belonged to Manohar Patil, who had executed Will dated 04.04.2003 (Exhibit-128). In the said Will the front portion of the said building situated on Plot No.63 Vidhya Vihar Colony, Pratap Nagar, Nagpur was permitted to be retained by Parag Patil i.e. respondent no.2. Whereas the back portion of the said building facing towards 8 feet road which was occupied by Dr. Manoj Patil on rental basis was to be retained by Tushar Patil i.e. plaintiff. There is no dispute about the fact that the suit premises is situated in the portion of the premises which went to the share of the plaintiff. The defendants do not dispute the Will executed by Manohar Patil.

From the evidence on record it can be said that in respect of the suit premises the plaintiff is landlord. Pertinently though Parag Patil is joined as a respondent in this petition, he does not contest the same nor claim any title in respect of the said portion of the property i.e. suit premises.

11. The learned trial Court has taken into consideration the evidence on record which indicates that in respect of the suit premises plaintiff is landlord and that there is a tenancy agreement between the parties and that the nomenclature of the agreement of being leave and licence agreement is not decisive. No doubt there would be an embargo created for the landlord to seek the premises from the tenant on the ground of *bona fide* requirement in genuine case of leave and licence agreement, however, once it is admitted by defendants and held by trial Court that the agreement between the parties is not licence but it is a tenancy, it is open for the plaintiff to claim the premises on the ground of *bona fide* need.

12. On the point of the *bona fide* need sought to be claimed by the landlord is fairly settled to say that the landlord is the best judge of his need and that is not direct the landlord and even Court cannot issue any direction in this regard to the landlord

the only requirement is to be seen by the Court is that the claim of the landlord to *bona fide* need is genuine and not *mala fide*. Herein this case from the evidence on record it is clear that the plaintiff is in need of suit premises to occupy the same. He stepped into the witness box and substantiated his *bona fide* need. In absence of any *mala fide* being shown by the tenant, this Court finds no reason not to accept the said claim of the landlord which is established before trial Court.

13. In so far as the judgment relied upon by the petitioner in case of *Subhash K. Thakkar supra*, in the said case there were joint owners of the properties representing different families. In the light of the facts of the said case it was held that *bona fide* requirements of one of the family would not be sufficient reason to allow application unless one of the joint owners representing a different family gives up the claim in favour of other joint owners. Thus what is required to be considered is that there is no claim from the other joint owner with regard to the suit premises. As observed herein above in spite of respondent no.2 having been joint as a party respondent to the present petition, he does not make any claim in the suit premises. Thus, in respectful view of this Court the said judgment would not help the petitioner to

substantiate his case in any manner.

14. On the point of maintainability, though now the said point is sought to be raised by the Counsel for the petitioner in this petition however, no such objection to the maintainability of the suit was raised at any point of time during the trial. Apart from this, since the issuance of notice is not a condition precedent for filing a suit under the Rent Act, unlike Transfer of Property Act, this Court finds no substance in the contention that on account of withdrawal of the earlier notice of year 2005 the suit itself is not maintainable. The suit has been filed on multiple ground of arrears of rent as well as of *bona fide* need. It is settled law that the suit can be filed for the arrears of rent even after period of three years. However, the entitlement of the landlord to recover the rent may be restricted upto three years. So also the ground of *bona fide* requirement is to be seen from the pleading and considering these aspects, present suit cannot be held to be not maintainable.

15. The concurrent finding recorded by the trial Court as well as the Appellate Court being in consonance with the evidence on record and the law, cannot be termed as perverse in order to cause interference therein.

16. Hence petition stands dismissed.

(R. M. JOSHI, J.)

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