



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

WRIT PETITION NO.5554 OF 2010

PETITIONERS : 1) Madansing s/o Harbhajansing
Original. defts. Chopra, aged about 50 years,
Occupation business, resident of
Bharuka Bhavan, Dhantoli, Nagpur

Amendment as
per court's order
dt. 6.1.03

- 1(1) Lr's of Petitioner No. 1
Sharanjeet Kaur Chopda Wd/o
Madansingh Chopda, aged about 55
yrs. R/o Ramdaspath, Nagpur.
- 1(2) Gurpreet S/o Madansingh Chopda
aged 25 yrs. R/o Ramdaspath, Nagpur.
- 2) Pandit Dinanath Sharma,
aged about 60 years, Occ. business,
resident of Vijaynagar, Chhaoni,
Nagpur.

..VERSUS..

- RESPONDENTS** : 1) Kaustubh s/o Wasudeo Buty,
original plaintiffs aged about 35 years,
- 2) Sanjay s/o Wasudeo Buty, aged about
53 years,
- 3) Ashish s/o Wasudeo Buty,
aged about 26 years,
- 4) Smt. Sunita wd/o Wasudeo Buty,
aged about 58 years,
All residents of Civil Lines, Nagpur.

Mr. D. V. Chauhan, Senior Advocate a/b. Mr. Aditya Chaudhari and Mr.
Nischay Jadhav, Advocates for petitioners
Mr P. V. Vaidya, Advocate for respondents.

CORAM : ROHIT W. JOSHI, J.

DATE : 03.10.2025

ORAL JUDGMENT :

- 1) Heard learned counsel for the respective parties.
- 2) The petitioner Nos.1(1) & 1(2) in the present writ petition are the legal representatives of original defendant No.1, the petitioner No.2 is the defendant No.2 in Special Civil Suit No.1680 of 1985, which is a suit for possession filed by the present respondents. The parties will hereinafter be referred to as 'plaintiffs' and 'defendants'.
- 3) The plaintiffs filed the suit against the defendant Nos.1 and 2, *inter alia*, claiming that the defendant No.1 had acquired the suit property as tenant from the plaintiffs. The plaintiffs had filed proceedings for permission to issue quit notice to the defendant No.1 under the erstwhile C.P. and Berar Rent Control Order, 1949. The litigation in the rent control proceedings came up to this Court, where the landlords/plaintiffs were granted permission to issue quit notice and thereby terminate tenancy of the defendant No.1.
- 4) Accordingly, the plaintiffs filed the aforesaid suit,

being Special Civil Suit No.1680 of 1985, after issuing quit notice to defendant No.1. Defendant No.2 was arrayed as party to the suit, as he was claiming to be in possession of the property.

5) The defendants opposed the suit predominantly on the ground that the defendant No.1 alone was not the tenant and the property was let out to a partnership firm named M/s. Needos Hotel and Restaurant.

6) The learned Trial Court accepted the defence raised by the defendants and dismissed the suit for eviction and possession. However prayer for payment of arrears of rent was granted by the learned Trial Court. The learned Trial Court has predominantly relied upon a document at Exh. 66 in holding that rent was being paid to the plaintiffs/landlords by the partnership firm and as such it was duly proved that the partnership firm was the tenant. Likewise the learned Trial Court referred to some correspondence between the statutory authorities and the establishment, as well as bank documents and other documents of Nagpur Municipal Corporation, Nagpur and Excise Authorities to conclude that

the tenant was a partnership firm.

7) Aggrieved by the refusal of the prayer for eviction and possession, the plaintiffs preferred an appeal, being Regular Civil Appeal No.250 of 1991. The learned First Appellate Court has allowed the appeal. The learned First Appellate Court has recorded a finding that the defendant no.2, who claimed to be the other partner of the alleged tenant/firm, was all the while aware about the rent control proceedings, which were initiated against the defendant No.1 alone. The learned First Appellate Court has further recorded that, undisputedly, defendant no.2 was admitted as a partner in the firm in the year 1980 and the tenancy commenced somewhere around in the year 1965.

8) Dealing with the document at Exh.66, which is one of the foundations on the basis of which the learned Trial Court rejected the prayer for eviction and possession, the learned First Appellate Court examined the document and has recorded that the rent was received under the said document at Exh.66 from defendant No.1 in his personal capacity. The learned First Appellate Court has observed that

the learned Trial Court was in error in holding that as per the document at Exh.66 rent was paid by the defendant No.1 in his capacity as partner of the said firm.

9) What transpires from the record is that the plaintiffs had initiated rent control proceedings under the C.P. and Berar Rent Control Order against the defendant No.1 alone. These proceedings were contested solely by defendant No. 1. The defendant No.1 never contended that the partnership firm was the tenant and that he was not a tenant of the firm in his personal capacity.

10) The learned First Appellate Court, referring to the evidence on record, has recorded a clear finding of fact that the defendant No.2 was aware about the fact that rent control proceedings were initiated against the defendant No.1, and yet, he did not choose to raise any objections to the said proceedings till the said proceedings assumed finality up to this Court. In such circumstances, the learned First Appellate Court has held that the defence that firm was a tenant was raised by way of an afterthought.

11) The learned First Appellate Court has dealt with

entire evidence on record and has recorded a finding of fact that the defendant No.1 alone was the tenant. The learned First Appellate Court has also dealt with the findings recorded by the learned Trial Court while reversing the same.

12) There is no documentary evidence to demonstrate a contract between the partners treating the tenancy to be property of the firm. The evidence on record indicates that the defendant No.1 alone was the tenant.

13) It is well settled that individual property of a partner, of a partnership firm, although used for business of the firm, is not property of the firm unless there is a specific agreement between the partners to treat the property as property of the firm. There is no evidence to suggest that the lease was treated as property of the firm. Assuming that the firm was paying rent, it must be stated that, since the premises were being used for business of the firm, the firm may pay the rent. However, unless there is agreement as regards the property being treated as property of the firm, the same cannot be said to be property of the firm, only because it was used for business of the firm. It will be pertinent to

mention here that the partnership deed placed on record does not indicate that the tenanted premises was treated as property of the firm. Likewise, there is no evidence of any nature whatsoever indicating agreement between the parties to treat the suit property as property of the firm.

14) It appears that defendant No.2 was, all the while, aware about the rent control proceedings and yet he chose not to participate in the same. Defendant No.2 is a fence-sitter. There appears to be a deliberate design to stay at bay. The defendants have started claiming tenancy of the firm after the rent control proceedings were decided in favour of the plaintiffs/landlords, up to this Court. In this regard, it will be appropriate to state that the defendant No.1 had filed a suit, being Special Civil Suit No.74 of 1980. Plaint in the said suit is at Exh. 52. The defendant No.1 has declared his status as proprietor of M/s. Needos Hotel and Restaurant in the cause title of the plaint. It will also be pertinent to mention that the plaintiffs had also filed a suit, being Civil Suit No.647 of 1980, against the defendant Nos.1 and 2, in which a specific contention was raised that defendant No.1 was the

tenant and defendant No.2 was inducted by him as a partner. In the written statement in the said suit filed by the defendant Nos.1 and 2 also it is not contended that the partnership firm was the tenant. It will be pertinent to mention here that the written statement also makes a reference to the rent control proceedings which were pending at the relevant time. It is clear from the perusal of the written statement in the said suit and written statement filed in the present matter that plea of tenancy of partnership is tactically taken in order to defeat suit for eviction filed by the plaintiffs after obtaining permission to issue quit notice under the provisions of the Rent Control Order. When the rent control proceedings were finally decided in favour of the plaintiffs/landlords and as such decree for eviction in the suit had remained a mere formality, the defendants deliberately took a stand that the partnership firm was the tenant and that the defendant No.1 was not tenant in his personal capacity. This defence is to overreach the orders passed under the rent control proceedings, which had attained finality between the parties. It will be pertinent to mention here that,

under the scheme of the Rent Control Order, a landlord was required to file an application before Rent Controller for obtaining permission to issue quit notice and once permission was granted by the Rent Controller, only then suit for eviction could be filed by the landlord, after issuing notice for termination of tenancy as contemplated under the Transfer of Property Act.

15) The learned Trial Court has turned a blind eye to the pleadings of the defendants in the earlier rounds of litigation, which completely falsifies their stand taken in the suit for eviction.

16) It will be pertinent to mention here that finding by the Rent Controller on the issue of tenancy operates as *res judicata* and cannot be questioned in a suit for eviction filed pursuant to the order passed by the Rent Controller under the Rent Control Order. Reference in this regard can be had to the judgment of this Court in the matter of ***Taher Ali s/o Abdul Hussain & others vs. Shri Shivaji Education Society, Amravati*** reported in ***1996(1) Mh.L.J. 253***. The defendant No.1 cannot contend that the partnership firm was a tenant,

in view of the order passed in the rent control proceeding against him, treating him to be a tenant.

17) As regards defendant No.2, as stated above, it is clear from the record that he was aware about the rent control proceedings all throughout and did not contest the same. Defendant No.2 has also admitted in the pleadings in other proceedings, that defendant No.1 was the tenant. Therefore even defendant No.2 cannot claim that the partnership firm was the tenant.

18) In that view of the matter, in the considered opinion of this Court, no case for interference is made out with the well reasoned judgment passed by the learned First Appellate Court. In the result, writ petition is **dismissed**.

19) At this stage, the learned Advocate for the petitioners makes a request to grant time of six months to vacate the property. He states that an undertaking of all the persons at the helm of affairs of the business shall be filed with this Court, stating that the premises will be vacated without fail on or before 30th November, 2025, and that such undertaking shall be filed on or before 13th October, 2025.

20) The learned Advocate for the respondents strongly opposes his request.

21) In view of the statement made, time for vacating the premises is granted till 30th November, 2025.

22) Rule is discharged. No order as to costs.

(ROHIT W. JOSHI, J.)

Tanmay..