



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

MISC. CIVIL APPLICATION NO.214/2025 (FOR REVIEW) IN
WRIT PETITION NO.5762/2023 (D)

Atul Percy David .Vs. Young Men's Christian Association, Sitabuldi, Nagpur.

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

Court's or Judge's orders

Dr. R. S. Sirpurkar, Advocate for applicant.
Mr. R. M. Sharma, Advocate for non applicant.

CORAM : ANIL L. PANSARE, J.
DATE : JUNE 17, 2025

Heard

2. Review of order dated 19.11.2024 and consequential order dated 28.11.2024 is sought mainly on the count that non applicant - original petitioner has suppressed certain vital facts. Counsel for applicant has invited my attention to impugned order, particularly what has been observed in paragraph 4.

3. This Court was made to believe and accordingly held in paragraph 4 that the applicant – original respondent (tenant) has admittedly not even paid nor tendered in the Court, the rent pending suit.

4. Counsel for the applicant has produced chart showing payments made pending suit (Page 100, Annexure 'H'), which indicates that certain amounts were paid during the period from 08.07.2005 till 04.04.2024 though there was huge gap in the intervening period, like, a payment of Rs.4771/- was made on 18.03.2006 and the next payment was made on 10.07.2015 and then Rs.5,000/- was paid on 04.04.2024. Thus, there is a gap of about nine years in paying the rent.

5. The counsel for non applicant submits that there is dispute as regards payment of Rs.20,000/-. He further submits that even if the payment under the chart is believed to be true, it shows that payment of rent was not made regularly as required under Section 15 (3) of the Maharashtra Rent Control Act, 1999 (For short the, "Act of 1999) and, therefore, the non applicant was entitled for recovery of possession.

6. To my mind, the arguments put forth will have to be considered in the light of what has been held by the Court while passing the impugned judgment, more particularly what the Court was made to believe. As stated earlier, both the parties made the Court believe that the applicant-tenant has not paid nor tendered in the Court, rent pending the suit. It is a different matter that in paragraph 5, the Court has further recorded that the tenant has admittedly not paid or tendered in the Court the rent regularly but then the fact remains that the Court was made to believe and, accordingly categorical finding has been recorded, that the tenant has neither paid nor tendered in the Court the rent, pending suit. The non applicant (original petitioner) should have disclosed true facts in the pleadings.

7. Another reason put forth by applicant to review the orders is that the plaint as placed on record, was not true and correct plaint. The counsel for the applicant submits that paras 4A to 4C in the plaint were though incorporated by way of amendment, was later on rejected by the Trial Court after having High Court remanding back the application seeking amendment to consider it afresh.

8. It appears that the Trial Court, while rejecting the application seeking amendment, has further noted that whatever amendment has been carried out by the plaintiff – original petitioner will be not considered. Counsel for the non applicant submits that

since this finding was noted, the non applicant thought it proper to let the amendment continue on record.

9. The question, however, is; was not it the duty of non applicant to disclose the aforesaid fact either in the memo of petition or during the course of argument? I hope it is, particularly when this portion of the plaint deals with the aspect of necessity to plead and prove the requirement of occupation of suit property for the purpose of Trust. The non applicant relied upon certain judgments to contend that where landlord is a public Trust, it is entitled to recover possession of the premises for occupation, for the purpose of the Trust in terms of Section 16 (1)(g) of the Act of 1999.

10. This Court, by relying upon the judgment cited by counsel for non applicant (petitioner), observed that where the landlord is a public Trust, what is required is to plead and prove to succeed, the ground of bona fide need i.e. the premises are required for occupation, for the purposes of the Trust and nothing more. Thus, the requirement is of pleading and proof of requirement of premises for occupation for the purpose of public Trust.

11. In this context, if paragraphs 4A to 4C are to be ignored, there are no pleading in this regard. So far as evidence on this point is concerned, the counsel for applicant has invited my attention to the finding of Trial Court which is based on the cross examination of non applicant's witness. It appears from the finding so recorded that the non applicant's witness admitted in the cross-examination that copy of bye-laws of the Trust was not produced on record and that he had no knowledge of the bye-laws of the Trust and does not know the object of the Trust.

12. Based on this evidence, the Trial Court noted that the benefit under Section 16(1)(g) of the Act of 1999 cannot be granted. Unfortunately, this fact viz. evidence on this point of the requirement

of pleading and proof has been not highlighted and, therefore, this Court proceeded to record that the non applicant has successfully pleaded and proved that the suit property is required for the purpose of non applicant – Trust.

13. Thus, it appears that the judgment under question has been passed by not considering certain vital facts, therefore, it is necessary to revisit the controversy and for doing so the judgment will have to be reviewed.

14. Sum and substance of the above discussion is that the applicant has made out case for review of the impugned judgment. Accordingly, the application is allowed. The order dated 19.11.2024 and consequential judgment/order dated 28.11.2024 passed by this Court in Writ Petition No. 5762/2023 are quashed and set aside. The petition is restored to file for consideration afresh. List the petition in the week commencing from 30.06.2025.

15. Learned counsel for the non-applicant – original petitioner shall place on record at least two judgments of the Hon'ble Supreme Court highlighting the importance of maxim, "He who comes into equity must come with clean hands" and will justify filing petition without disclosing material particulars.

16. The application is disposed of in the above terms. No order as to costs.

(Anil L. Pansare, J.)