



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

WRIT PETITION NO.2873/2022

Rajesh Jain, Proprietor Rajesh Kirana Stores

...Versus...

Shri Damodar s/o Pilaji Yewale Patil (Dead)

Babanrao s/o Damodar Yewale and others

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

Court's or Judge's orders

Mr. S.V. Sohoni and Mr. S.S. Sohoni, Advocates for petitioner

CORAM : ROHIT W. JOSHI, J.

DATE : 03/11/2025

1. The present petition is filed challenging the judgment and order dated 27/11/2019 passed by the learned Ad hoc District Judge -1, Nagpur in Regular Civil Appeal No.404/2025 arising out of the judgment and order dated 09/04/2015 passed by the learned Small Causes Court, Nagpur in Regular Civil Suit No.405/2007, which is a decree for eviction passed against the present petitioner on the ground of *bona fide* need under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short, hereinafter referred to as "MRC Act")

2. The suit property comprises of shop block admeasuring 8 X 12 sq. ft. It is located in Laksharibag area in Nagpur City. It is the case of the plaintiff that the suit shop was required for self employment of his son. The defendant filed written statement opposing the suit. The defendant contended that the plaintiff was not in need of the suit property and that the suit for eviction was filed to get the same vacated from the

defendant and in order to let it out to other some person on higher rent. The defendant also contended that he was doing business in the suit shop since the year 1996 and has earned goodwill and reputation from the business that was being done on the suit property for a period of around 11 years prior to the date of filing of the suit.

3. While the suit was pending, the original plaintiff expired and his legal representatives were brought on record. The plaintiff's evidence indicates that plaintiff No.1 (4) was in service with a private printing press and that he has lost his employment since the press was closed down. The defendant admitted in his cross-examination that his son was unemployed. The learned trial Court has found that the fact of unemployment of plaintiff's son was deposed by PW.1- Raju and that the said fact was also admitted by the defendant in his cross-examination. In view of such finding, the learned trial Court answered the issue of *bona fide* need in favour of the plaintiff.

4. As regards the issue of comparative hardship, the defendant came up with a contention that the entire family comprising of nuclear family of the defendant and his two brothers was depending upon the income derived from the business that was being run from the suit property. The said contention is discarded by the learned trial Court on the ground that the defendant was doing business under the name and style of "Jain Stores" as a sole proprietor thereof. The learned trial Court recorded that the suit property was not let out to the joint family of the defendant. The learned trial Court also found that the plaintiff also had a big family and

members of the family were unemployed. The learned trial Court, therefore, answered the issue of comparative hardship in favour of the plaintiff.

5. In view of the findings as aforesaid, the suit was decreed, against which the petitioner/landlord filed an appeal. The learned first Appellate Court has also considered the evidence and has found that it is not in dispute that the members of the family of plaintiff were unemployed and has accordingly accepted the case of *bona fide* need set up by the plaintiff. On the aspect of comparative hardship, the learned Appellate Court has observed that the defendant himself has stated that the family had two separate godowns, which were utilized for the business purpose. The learned first Appellate Court has referred to the evidence on record, which indicated that the godowns could be utilized as shops by the defendant.

6. In that view of the matter, the learned Appellate Court answered the issue of comparative hardship in favour of the plaintiff holding that the godowns could be utilized as shops for the business of the defendant and his family members.

7. The findings recorded by both the learned Courts are pure findings of fact. The findings are recorded on appreciation of evidence. The material on record indicates that the fact that members of plaintiff's family are unemployed is not in dispute. As regards comparative hardship, two godowns, which can be utilized as shops are admittedly available with the family of the defendant. That apart, the defendant also did not start searching for alternate premises despite suit for eviction being filed against him on the ground

of *bona fide* need and therefore, issue of comparative hardship deserves to be answered against him also on this count as is held by several decisions, including in the case of *Badrinarayan Chunilal Bhutada Vs. Govindram Ramgopal Mundada*, reported in *(2003) 2 SCC 320*.

8. In view of the above, no fault can be found with the findings of the learned Courts with respect to issue of comparative hardship. In the result, no case for interference is made out. The writ petition stands dismissed. No order as to costs.

(ROHIT W. JOSHI, J.)