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

WRIT PETITION NO. 5370 OF 2021

(Shri Narendra s/o Bhayyaji Aasre & Ors. Vs. Shri Vinayak s/o Narayan Hatwar)

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

Mr. D.S. Paunikar, Counsel for the petitioners.
Mr. A.M. Ghare with Mr. P.V. Ghare, Counsel for the respondent.

CORAM : ANIL L. PANSARE, J.
JULY 15, 2025

After having heard at length, what emerges is that the First Appellate Court has opined that the trial Court, i.e., the Small Causes Court, should have framed issues on the basis of pleadings before proceeding to record evidence of parties. Accordingly, the First Appellate Court did not record finding on other points, which were pertaining to the *bona fide* need of the premises, and further about who would suffer greater hardship, if a decree is passed.

2] The learned Counsel for the petitioners submits that the question of framing issues will not arise in the present case inasmuch as the suit summons was issued under Order V Rule 5 of the Code of Civil Procedure, 1908 (for short “the Code”), which provides that in every suit heard by the Court of Small Causes, summons shall be for final disposal of suit. Thus, according to him, in a suit lodged before the Court of Small Causes, summons may not be issued to settle the issues. He submits that the only requirement is to frame points for determination and then to render a decision. In support, he has relied on the following judgments :

I] *Tribhovandas Manchharam Vs. C.R. Contractor's Company at Broach [AIR 1943 BOMBAY 416].*

II] *Dinesh Kumar Vs. Asha Agarwal [2022 (4) ALJ 331].*

3] As against, the learned Counsel for the respondent submits that the proceedings before the Small Causes Court are governed by the provisions of the Maharashtra Rent Control Act, 1999 (for short "Act of 1999"), which provides for an independent procedure and, therefore, framing issues will be a part of the procedure to decide the controversy. In support, he has relied upon the judgment of a Co-ordinate Bench of this Court in *Jasraj Lalaji Oswal Vs. Raziya Mehboob Patel and another [2020(5) Mh.L.J. 681].*

4] This aspect, however, was not argued before the First Appellate Court and is not dealt with by it and, therefore, the First Appellate Court had no occasion to consider such argument.

5] Another limb of argument is that if at all the First Appellate Court was of the view that issues should have been framed, the First Appeal being continuation of suit, it could have framed issues and recorded evidence or could have referred the matter to the trial Court for recording evidence or to reconsider the issue afresh. The First Appellate Court, however, not only allowed the appeal but has dismissed the suit on this count.

6] The learned Counsel for the respondent submits that the First Appellate Court has rendered finding on merits.

7] I have gone through the judgment to find that the First Appellate Court has made comments on the provisions under which, the suit ought to have been filed. According to the First Appellate Court, the suit should have been filed under Section 16(1)(i) of the Act of 1999 and not under 16(1)(g). He further opined that the *bona fide* need under these two provisions has a different context, and accordingly, the pleadings and evidence will have to be assessed. However, the First Appellate Court has not rendered a finding on the point of requirement of *bona fide* need and also sufferance of greater hardship. That being so, it would be difficult to say that the First Appellate Court has decided the appeal on merits.

8] In any case, since the finding of the First Appellate Court is mainly based on the aspect of framing issues by the trial Court, which the First Appellate Court has considered without referring to Order V Rule 5 read with Order L of the Code, and since the parties intend to rely on some judgments, which were not placed before the First Appellate Court, in my view, this is a case fit for remanding the matter to the First Appellate Court. Hence, following order is passed :

ORDER

I] The petition is partly allowed.

II] Order dated 24/1/2020 passed by the 3rd Adhoc District Judge and Asstt. Sessions Judge, Nagpur, in Regular Civil Appeal No. 446/2018, is quashed and set aside.

III] Regular Civil Appeal No. 446/2018 is restored to the file of the 3rd Adhoc District Judge and

Asstt. Sessions Judge, Nagpur, for consideration afresh in accordance with law and what has been stated in the body of the order.

IV] R & P be sent back.

V] The parties shall appear before the First Appellate Court on 5/8/2025.

VI] The status as existed before the First Appellate Court shall stand restored. All points are kept open.

VII] The petition is disposed of in terms of above. No costs.

(ANIL L. PANSARE, J.)

Sumit