



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

WRIT PETITION NO.7621 OF 2023

[M/s Samadhan Marketing & Merchandise Pvt. Ltd. ..vs.. Sumanbai wd/o
Baburao Kotawar and Anr.]

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

Court's or Judge's order

Mr M. P. Khajanchi, Advocate for Petitioner.
Ms K. Satpute, Advocate for Respondents.

CORAM : ANIL L. PANSARE, J.

DATE : 22nd JANUARY, 2025.

1. Heard.

2. The petitioner / tenant is aggrieved by the judgment and decree dated 31.08.2023 passed by the learned District Judge-2, Chandrapur in Regular Civil Appeal No.101 of 2015.

3. Briefly stated the facts are, the respondents /original plaintiffs filed a suit for ejectment on determination of tenancy by notice. The respondents' case was based on a quit notice of three months issued on 07.10.2013. According to respondents, the parties entered into agreement of tenancy on 24.05.2011. The commencement date of tenancy was 15.06.2011 and the tenancy was for three years. Thus, the tenancy would come to an end on 14.06.2014. The respondents, however, issued a notice of termination on 07.10.2013 calling upon the petitioner to vacate the premises. The notice referred to the terms of agreement. However, the original agreement was not produced before the Trial Court.

4. According to respondents, the original agreement was with petitioner, and therefore, they had filed photo copy of the

agreement which came to be marked Article – A. The agreement was said to be not proved by the Trial Court because the original agreement was not produced and secondly, the respondents failed to make out a case for secondary evidence in the sense neither the application was filed to lead secondary evidence nor were there averments in the chief-examination to make out a case to lead secondary evidence. Having not proved the agreement, the Trial Court took a view that merely on the basis of notice dated 07.10.2013, one cannot jump to the conclusion that the notice is issued in terms of the provisions of agreement.

5. The Trial Court has then noted other discrepancies as well to doubt the case of the respondents. However, I need not to go into that part of controversy in as much as the Trial Court's finding that the contents of notice without placing on record the terms of agreement will not be sufficient to prove that the notice was in terms of agreement is in tune with the provisions of the Indian Evidence Act, 1872.

6. The First Appellate Court, however, has overturned the finding of the Trial Court which was based on the appreciation of evidence. The First Appellate Court observed that the respondents' case was that of termination of tenancy by efflux of time as also the quit notice dated 07.10.2013.

7. The counsel for petitioner has taken me through the pleadings to point out that the respondents have nowhere pleaded that tenancy stood terminated by efflux of time.

8. The counsel for respondents made an attempt to show that there are averments to show that the respondents made out a case of implied termination of tenancy by efflux of time.

However, the pleadings do not support such theory. The case as put up by the respondents was a categorical case as could be seen from para 6 of the plaint that the tenancy was terminated by sending a quit notice dated 07.10.2013.

9. The counsel for respondents has then taken me through the contents of notice dated 07.10.2023, wherein the respondents have stated that they do not intend to extend the lease further. This statement in notice, according to the respondents' counsel, is indicative of the fact that the respondents have taken a plea of termination of tenancy by efflux of time.

10. I do not find substance in the said submission. The intention of the respondents to not extend the lease for further period is one thing and to file a suit on the ground of termination of tenancy by efflux of time is another. Once the respondents have taken a plea of termination of tenancy in terms of notice dated 07.10.2023, the respondents were under obligation to make out a case that the tenancy stood terminated as stated in the notice.

11. As stated earlier, the notice was based on the terms of tenancy, which agreement was never produced before the Court below. In the circumstances and in absence of necessary pleadings as regards termination of tenancy by efflux of time, the First Appellate Court could not have overturned the decision of the Trial Court, which was based on appreciation of evidence as regards the proof of documents as also the Rules of Secondary Evidence.

12. In view of above, the judgment and decree passed by the First Appellate Court is not sustainable.

13. The petition is accordingly **allowed**. The impugned judgment and decree dated 31.08.2023 passed in Regular Civil Appeal No.101 of 2015 by the District Judge-2, Chandrapur, is hereby quashed and set aside. The judgment and decree dated 06.07.2015 passed in Regular Civil Suit No.54 of 2014 by the Joint Civil Junior Division, Rajura is restored.

14. The writ petition is disposed of accordingly.

JUDGE

TAMBE