2026:BHC-NAG:4638

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

SECOND APPEAL NO.355 OF 2025

Manohar S/o Ramkrushna Budh **.Vs.** APMC, through its Secretary, Amravati

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

Mr. V.P. Panpalia, Advocate for appellant.

CORAM : ROHIT W. JOSHI, J.
DATE : 17/03/2026

1. The present appeal is filed challenging the judgment and decree dated 17.11.2015 passed by the learned 4th Joint Civil Judge Junior Division, Amravati, dismissing Regular Civil Suit No.260 of 2009 filed by the present appellant and also judgment and decree dated 20.05.2025 passed by the learned Principal District Judge, Amravati, dismissing Regular Civil Appeal No.06 of 2016 filed by the present appellant challenging the judgment and decree passed by the learned trial Court.

2. The appellant, who is the original plaintiff, claims that he is in occupation of shop No.12, admeasuring around 150 sq.ft. situated in the yard of respondent/APMC, as a tenant. The plaintiff has made a reference to letter of allotment dated 06.01.2006 in the plaint and states that he is in possession of the suit property in terms of the said letter. The plaintiff claims that his peaceful possession over the suit property was being threatened by the defendant/APMC, as a consequence of which he was required to file the suit. The prayers in the suit are that the defendant/APMC does not have authority to evict the appellant without following due process of law and for a perpetual injunction restraining from doing so.

3. The defendant opposed the suit by filing written statement. The defendant claims that in terms of the letter of allotment dated 06.01.2006, the plaintiff was required to deposit an amount of Rs.3,75,000/- towards the security deposit. It is claimed that the plaintiff had deposited a sum of Rs.5000/- along with his application for allotment of shop and further amount of Rs.20,000/- thereafter. Cheque of Rs.1,50,000/- issued by the plaintiff towards the security deposit was dishonoured and the plaintiff did not tender payment of Rs.2,00,000/-. The defendant contends that lease deed with respect to the suit property was therefore not executed. It is the case of the defendant that, in view of the plaintiff handing over post dated cheque of Rs.1,50,000/-, he was allowed to temporarily occupy the suit shop without any right. The defendant has claimed that the possession of the suit property was taken pursuant to action taken under Section 32E of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as "APMC Act, 1963"). The contention of the defendant is that possession of the suit shop was taken on 06.01.2009 and the suit premises were also sealed by the APMC.

4. It is the case of the defendant that, after filing of the suit, the plaintiff forcibly entered the suit shop and has unlawfully occupied the same in the first week of

March, 2013. The suit shop is presently in occupation of the plaintiff is a fact which is not in dispute. However, the question which is required to be considered is as to whether on 14.12.2009 i.e. the date of institution of suit, the plaintiff was in possession of the suit property. It will be pertinent to state that the plaintiff has not filed challenged the action of defendant/APMC in taking possession of the suit shop pursuant to in exercise of powers under Section 32E of the APMC Act, 1963. His contention is that possession was never taken.

5. The learned trial Court has dismissed the suit. The learned trial Court has found that the contention of the defendant with respect to taking possession of the suit property in exercise of powers under Section 32E of the APMC Act, 1963 was supported by documentary evidence. The learned trial Court found that the plaintiff was placed in possession of the suit property pursuant to the allotment letter, however, he did not fulfill the terms and conditions of the allotment of making deposit of Rs.3,75,000/- towards the security deposit. It is found that, the plaintiff merely paid Rs.20,000/- and cheque of Rs.1,50,000/- issued by the plaintiff to the defendant was dishonoured. The plaintiff did not tender balance amount of Rs.2,00,000/-. Thus, out of the total amount of security deposit of Rs.3,75,000/-, merely Rs.25,000/- was paid by the plaintiff. It is also found that lease deed with respect to the suit property is also not executed in view of default on the part of the plaintiff in depositing the security deposit.

6. As regards the contention of plaintiff that he was all the while in possession of the suit property, the learned trial Court has found that the possession was indeed taken by the APMC as is apparent from the notice and panchanama. Although the plaintiff claimed that he was paying municipal taxes for the suit property, he produced tax receipts (Exhs.38 and 39) for the years 2006-07 and 2008-09 only. Receipts subsequent to this period, were not produced on record by the plaintiff. These findings corroborated with the case of the defendant that possession was taken in the year 2009. In view of such findings, the learned trial Court dismissed the suit.

7. The learned First Appellate Court has confirmed the findings recorded by the learned Trial Court and has dismissed the appeal accordingly. The learned First Appellate Court has adverted to the entire evidence on record to hold that the plaintiff was not in possession of the suit property as on the date of institution of suit. The learned First Appellate Court also found that the plaintiff had committed breach of the terms and conditions of allotment letter by not making deposit of Rs.3,75,000/- with the defendant.

8. The learned Advocate for the appellant vehemently contends that the learned Courts below have erred in dismissing the suit disregarding the settled legal principle that even a trespasser who is in settled possession of a property cannot be dispossessed without following due process of law.

9. Whereas, this proposition of law cannot be disputed, it needs be seen as to whether as on the date of filing of the suit, the plaintiff was in possession of the suit property. Both the learned Courts have found that the defendant/APMC had taken measures under section 32E of the APMC Act, 1963 and had taken possession of the suit property from the plaintiff. This version of defendant is supported by the documentary evidence. The defendant/APMC has led positive evidence in the form of resolution and panchanama with respect to action taken under Section 32E of the APMC Act for taking possession of the property and the fact of taking physical possession in exercise of power vested under the said provision. These documents are proved and exhibited during the course of evidence of defendant's witness. Perusal of the cross-examination of defendant's witness where indicate that a suggestion is given that, defendant did not take any measures through the Court of law in order to evict the plaintiff. However, suggestion with respect to action under Section 32E of the APMC Act, 1963 is not given. This implies that the plaintiff has not disputed that the defendant/APMC had taken action against him under Section 32E of the APMC Act, 1963. The plaintiff has also failed to bring any documentary evidence on record showing his possession over the suit property from 2009 till the year 2013. It will be pertinent to mention that the plaintiff has filed tax receipts to indicate his possession over the suit property. However, these tax receipts are for the years 2006-07 and 2008-09. Tax receipts for subsequent period are not placed on record. The suit is filed on 14.12.2009. Prior to this, the defendant had taken possession of the suit property on 06.01.2009 itself. Thus, the plaintiff was not in possession of the suit property as on the date of institution of suit. The evidence suggests that the plaintiff forcibly entered the suit shop after filing of the suit. In view of the aforesaid, in the considered opinion of this Court, the concurrent findings recorded by both the learned Courts do not warrant any interference.

10. The learned Advocate for the appellant had advanced certain submissions with respect to legality and correctness of the action taken under Section 32E of the APMC Act, 1963. However, perusal of the prayer clause will indicate that the said action is not challenged in the civil suit. Apart from this, there is a statutory appeal provided under Section 52B of the APMC Act, 1963 to challenge action under Section 32E of the APMC Act, 1963 which is not filed.

11. It will be pertinent to state that the plaintiff had placed certain documents in the first appeal along with an application dated 09.12.2024 seeking permission to file documents on record. However, the plaintiff did not seek permission to lead additional evidence. These documents are letters issued by the Secretary of defendant/APMC calling upon the plaintiff to execute and registered lease deed and to clear the arrears of rent along with interest. Apart from this, a tax receipt is filed showing payment of tax by the plaintiff upto the year 2022-23. The plaintiff has relied upon these documents to contend that he is in possession of the suit property even today. The fact that plaintiff is in possession of the suit property as on date is not in dispute. What needs to be seen is as to whether he was in possession of the suit property as on the date of institution of suit. The tax receipt filed on record in the present appeal is dated 22.12.2022. It indicates payment of tax for the suit property upto the year 2022-23. The tax receipt does not indicate the period from which tax is paid. Even otherwise, payment of tax in the year 2022 cannot be a relevant factor to hold that plaintiff has proved possession over the suit property as on 14.12.2009 i.e. the date on which suit is instituted or that possession of the suit property was not taken in exercise of power under Section 32E on 06.01.2009. Copy of tax receipt does not bear signature or digital signature of any authority. As regards the other correspondence by the Secretary, the said documents, taken on their face value do not establish that possession under Section 32E was not taken by the defendant. Action under Section 32E is taken by the APMC. Letters allegedly issued by the Secretary of APMC, placed on record in first appeal do not indicate that the same are issued pursuant to any resolution or decision by the APMC. Therefore the letters are of not any consequence.

12. Even otherwise, the plaintiff has not filed application seeking permission to lead additional evidence. Likewise he has also not filed any application for amendment of plaint. In view of the aforesaid the said documents cannot be taken into consideration.

13. It must be reiterated that, even otherwise, the documents filed in the first appeal do not show possession of the plaintiff as on the date of institution of suit. It must be stated that even the defendant is not disputing the possession of the plaintiff over the suit shop from March, 2013 onwards. It is specific case of defendant that plaintiff had forcibly entered the suit shop in the month of March, 2013 while the civil suit was pending.

14. It must be stated that the defendant had invited application for allotment of shops in the complex. The plaintiff had made an application for allotment of shop. Accordingly, letter of allotment was issued in favour of the plaintiff. The parties were to execute a formal lease. However, in view of the breach on the part of the plaintiff, the lease could not be executed. The plaintiff has taken possession of the property pursuant to an agreement for letting the property on lease. The plaintiff is seeking injunction with respect to possession over the property. The right to hold possession flows from the agreement. The plaintiff has himself committed breach of the agreement. In this regard, it will be appropriate to refer to Section 38(2) of the Specific Relief Act, 1963 which provides that when injunction is sought on the basis of a contract, the provisions of Chapter II of the Act relating to specific performance of contract will be taken into consideration. Section 16(b) of the Specific Relief Act, 1963 provides that a person who has committed breach of agreement is not entitled to relief of specific performance. Consequently, such a person will also not be entitled to injunction on the basis of contract.

15. In view of the aforesaid, no substantial question of law arises for consideration in the said second appeal. Second Appeal is **dismissed**.

16. Having regard to the facts and circumstances of the case, the plaintiff will have to bear the costs of the defendant all throughout.

(ROHIT W. JOSHI, J.)

C.L. Dhakate