

## NAGPUR HIGH COURT

Rajniklal

Vs

Vithal Pandurang Kawade

Misc. Petn. No. 26 of 1952

(Mangalmurti and Deo, JJ.)

19.03.1952

### JUDGMENT

#### **Mangalmurti, J.**

1. This is an application under Article 226 of the Constitution to quash the order dated the 20th November 1951, passed by the Additional Deputy Commissioner, Nagpur, granting permission to the landlord to give notice to the applicant tenant determining the tenancy. The Additional Deputy Commissioner reversed the order of the Rent Controller, Nagpur. The applicant firm is the tenant of the non-applicant Manohar who is the manager of a joint Hindu family carrying on business in the name and style of 'Vithal Pandurang Kawade.' The applicant is the tenant of Block No. 611 on the Bohra Masjid Road, used as a godown, which is situated behind the brassware shop of the landlord. In the building, of which Block No. 611 is a portion, the landlord in partnership with others has been carrying on a wholesale aluminium sales depot under the name and style of "The Nagpur Aluminium Stores." To meet the demands of this rapidly growing business the landlord requires the premises in dispute. The Rent Controller refused permission on the grounds that the need was not of the landlord but of a business of which he was a partner and that though the premises in question were inadequate for the needs of that business the requirement could be met by ejecting the other tenants of the landlord. The Additional Deputy Commissioner held that the premises were necessary for the growing needs of the business. This finding cannot be challenged before us, particularly in view of the fact that the premises are quite adjacent to the premises where the wholesale business is carried on. It would be certainly economical for the business to have these premises for the godown rather than to have a distant one vacated by any other tenant. The learned counsel suggested that this godown could be kept at the residence of the landlord or other partners. There is no evidence to determine the distances of these premises from the premises in dispute. It must be left to the landlord to determine which premises he should use for his business.

2. The only material question for decision is whether the case falls under Clause 13 (3) (vi) (c) of the House Rent Control Order, 1949. That clause is :

"If after hearing the parties the Controller is satisfied that the landlord needs the house or a portion thereof for the purpose of a 'bona fide' business of his own which he intends to start or is already carrying on in the city or town concerned."

The learned counsel argues that the wholesale aluminium business cannot be said to be a 'business of his own' within the meaning of this clause. Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm" and the name under which the business is carried on is called the "firm name." It is settled law that a firm is not a separate legal entity and the firm name is a compendious way in which the business of the partners is carried on. Each partner carries on business for himself as principal and also as an agent for the other partners. Mutual agency is an essential condition of partnership. It must, therefore, be held that the landlord himself is carrying on the whole sale business in aluminium. The learned counsel relying on the words 'his own' contends that the business must be the exclusive business of the landlord. There is no warrant for such a construction. As has been held in '*V. M. Deshmukh V. K. M. Kothari*<sup>1</sup>',

"It would appear that what is meant by the word 'own' is something in which the landlord or his family have pecuniary interest."

The landlord in this case has undoubtedly a pecuniary interest in the business which he is carrying on along with his other partners. .

3. The decision of the Additional Deputy Commissioner is therefore correct. The application is dismissed without notice to the other side.

Application dismissed.

Cases Referred.

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<sup>1</sup>AIR 1951 Nag 51