

DW No. 1/2018

Narendra Vs. Pravin

Order Below Exh.1

(Dated :20.4.2018)

1] This Distress Warrant proceeding has been filed under Section 27-B of the Provincial Small Cause Courts Act.

2] The applicant, in the instant application has contended that the non-applicant is his tenant and he has failed to pay rent for 10 months on a monthly rent of Rs.5,000/-, total amounting to Rs.50,000/- despite receipt of notices issued to the non-applicant. Applicant has also claimed interest @ 15% per annum amounting to Rs.3,000/- and notice charges amounting to Rs.2,000/-. Thus, in all, applicant has claimed an amount of Rs.55,000/- from the non-applicant.

3] I have heard the learned Advocate for the applicant and non-applicant failed to appear in the present proceeding.

4] The non-applicant is duly served notice issued to the non-applicant vide Exh.6 in the present proceeding. But, non-applicant failed to appear in the present proceeding. Therefore, learned Advocate for applicant has prayed for issuance of Distress Warrant amounting to Rs.55,000/- against non-applicant and for that purpose applicant has also filed affidavit vide Exh.7. But, applicant has not filed original postal receipt by which he has sent notice to the non-applicant and also failed to file postal envelope in which applicant has sent notice to the non-applicant and which was unclaimed on record. Simply, applicant has filed xerox copy of postal receipt and xerox copy of envelope. Thus, the applicant has failed to prove the contents of the document by exhibiting the same.

5] As per Section 27-B (2) of the Provincial Small Cause Courts Act the application made under Section 27-B(1) shall be supported by an affidavit or affirmation in Form-A in the third schedule. No doubt, applicant

has filed an evidence affidavit. But, it is not in the proper Form-A of the third schedule of Section 27-B of the Provincial Small Cause Courts Act.

6] But, it appears that applicant has issued notice to the non-applicant. But, the applicant has filed postal receipt and refused envelope in xerox form. Therefore, on the basis of xerox copies, it cannot be said that notice issued by applicant to the non-applicant is duly served. Moreover, applicant has not proved the said fact on record and as such in absence of evidence relating to service of notice to the non-applicant, District Warrant cannot be issued against non-applicant. Therefore, in the result, I pass following order:

Order

1. The application for issuance of distress warrant is dismissed.
2. Costs in cause.

(Dictated and pronounced in open Court).

Date: 20.4.2018

(S. V. Dindokar)
Judge, Small Causes Court,
Nagpur.