

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

**WRIT PETITION NO.1300/2015**

**Vishnu s/o Rambhau Kapse and others**  
**...Versus...**  
**Ku. Malti d/o Shriram Rane and another**

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

Shri V.A. Dhabe, Advocate for petitioners  
Shri S.M. Patrikar, Advocate for respondent no.1

**CORAM : Z.A. HAQ, J.**

**DATE : 03.08.2015**

1. Heard Shri V.A. Dhabe, Advocate for the petitioners and Shri S.M. Patrikar, Advocate for the respondent no.1.
2. The respondent no.1 filed the civil suit against the petitioners praying for decree for eviction, possession and arrears of rent. The respondent filed an application under Order 15 - A of the Code of Civil Procedure and contended that the petitioners were in arrears of rent and they should be directed to pay the arrears of rent. The learned trial Judge by the order dated 6.2.2014 allowed the application filed by the respondent and directed the petitioners to deposit the arrears of rent. As the petitioners raised the dispute regarding the relationship of landlord and tenant, the learned trial Judge did not permit the respondent to withdraw the amount. This order was challenged by the petitioners in revision, which came to be dismissed by the District Court. The petitioners being aggrieved

by the order filed this writ petition. This Court passed an order on 11.3.2015 as follows :

*“Shri Dhabe, the learned counsel appearing for the petitioners/defendants, makes a statement that the matter is fixed tomorrow in the Trial Court for cross-examination of the plaintiff by the defendants.*

*The Trial Court shall, therefore, permit the defendants to cross-examine the plaintiff.*

*Shri Patrikar, the learned counsel appearing for the respondent No.1/plaintiff, submits that the plaintiff would be examining two witnesses; whereas Shri Dhabe, the learned counsel appearing for the petitioners/defendants, submits that the defendants would be examining three witnesses.*

*In view of this, the Trial Court to proceed further with recording of evidence and deciding the matter.*

*The Trial Court shall not touch the aspect of striking out the defence.*

*If the defendants fail to cross-examine the witnesses of the plaintiff on the dates so fixed, the right to cross-examine shall stand forfeited.*

*The Trial Court should see that the matter is decided before commencement of Summer Vacation 2015.*

*S.O. after Summer Vacation 2015.”*

3. The learned Advocates for the respective parties have informed that the civil suit has been disposed by the trial Court. The learned Advocate for the respondent submits that in view of the disposal of the suit, nothing survives in the petition and the challenge as raised by the petitioners has become infructuous.

4. Shri V.A. Dhabe, the learned Advocate for the petitioners submits that prior to filing of the application (Exh.93), the respondent had filed two applications (Exhs.20 and 66) which were rejected and in view of the order passed on the applications (Exhs.20 and 66), the learned trial Judge could not have allowed the application (Exh.93).

5. Be that as it may, in view of the disposal of the civil suit, in my view, the challenge as raised by the petitioners does not survive for consideration in this petition. The petitioners will be at liberty to raise the challenges in appropriate proceedings, if so advised.

6. The writ petition is dismissed with costs of Rs.2,000/- (Rupees Two Thousand Only) to be paid by the petitioners to the respondent within one month. Copy of receipt be produced on the record of the trial Court within one month.

**JUDGE**

Wadkar