

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

WRIT PETITION NO. 4073 OF 2015

Smt.Bindabai Yadav

-vs-

Smt.Gayatri W/o Suresh Gupta and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr.A.R.Kalariya, counsel for the petitioner.
Mr.Nitin Lalwani, counsel for the respondent No.1.

CORAM : SMT. VASANTI A NAIK,J.

DATE : 31.01.2017.

By this writ petition, the petitioner challenges the concurrent judgments passed by the trial and the first appellate court holding that the respondent was entitled to a decree of eviction and possession on the ground that the house in which the tenanted premises were located needed immediate demolition and reconstruction and that the petitioner-tenant had defaulted in payment of rent and had not cleared the arrears of rent despite the service of notice on her.

The respondent is the landlord. He had filed a suit against the petitioner-tenant for eviction on the ground that the house was extremely old and dilapidated and needed reconstruction as per the provisions of section 16(1)(i) of the Maharashtra Rent Control Act, 1999. According to the respondent, the petitioner had failed to pay the rent regularly and despite the service of notice on the petitioner to clear the arrears, the petitioner had not cleared the same and, therefore, the respondent was entitled to a decree of eviction under section 15 of the Act. The parties tendered the evidence and on an appreciation of the same, the trial court decreed the suit of the respondent on both the grounds. An appeal was carried by the petitioner to the first appellate court, but the first appellate court confirmed the findings recorded by the trial court and dismissed the

appeal filed by the petitioner. The petitioner has challenged the concurrent judgments in this writ petition.

It is submitted on behalf of the petitioner that the courts were not justified in holding that the respondent was entitled to evict the petitioner, in view of the provisions of section 16(1)(i) of the Act. It is stated that the issue was wrongly framed by the trial and the first appellate court in that regard. It is submitted that there was no material on record that the house was in a dilapidated condition and the same needed reconstruction. It is submitted that only one wall of the house was dilapidated and there is an admission in the cross-examination of the respondent that the dilapidated wall was reconstructed by the petitioner after the notice was served on the parties by the corporation. It is submitted that both the courts wrongly held that the petitioner had defaulted in paying the rent. It is stated that a finding of facts is wrongfully recorded that despite the service of notice on the petitioner, the petitioner had failed to deposit the entire arrears of rent. The learned counsel sought for the reversal of the findings recorded by the trial and the first appellate court.

On the other hand, it is submitted on behalf of the respondent-landlord that, this court may not interfere with the pure findings of facts recorded by the trial and the first appellate court, in exercise of the writ jurisdiction. It is submitted that a clear finding of facts is recorded by the courts on a proper appreciation of the evidence on record that the house was 100 years old and was in a dilapidated condition. It is submitted that the courts have rightly appreciated the evidence on record and held that the respondent was entitled to a decree of eviction under section 16(1)(i) of the Act. It is submitted that both the courts have recorded a finding of facts that the petitioner was irregular in making the payment of rent and despite the service of the notice under section 15 (1) of the Act on the petitioner, the petitioner had failed to deposit the rent within 90 days from the service of the notice or the filing of the suit. It is submitted that in the circumstances of the case, the writ petition is liable to be dismissed.

On hearing the learned counsel for the parties and on a perusal of the judgments, it appears that there is no scope for interference with the concurrent findings of facts recorded by the trial and the first appellate court. Both the courts have concurrently recorded a finding of facts that the petitioner was irregular in making the payment of rent and though the service of the notice under section 15 of the Act on the petitioner was proved by the respondent, the petitioner had failed to deposit the arrears of rent and the permitted increases with interest within 90 days, in the trial court. Both the courts have concurrently held that the respondent had been successful in proving that the amount due and payable by the petitioner was not paid by him in the trial court and certain amount was due and payable after the suit was filed and during the pendency of the suit. The findings of facts recorded by both the courts are based on a proper appreciation of the evidence on record and do not call for interference, in exercise of the writ jurisdiction. Also, in respect of the claim of the respondent for eviction under section 16(1)(i) of the Act, both the courts have concurrently held that the respondent had been successful in proving that the age of the house was more than 100 years and the northern wall of the house had collapsed. The courts considered the admissions of the petitioner in her cross-examination that certain part of the first floor of the house had also collapsed and the Nagpur Municipal Corporation had directed the parties to demolish the construction. The courts recorded a finding of facts that the house was more than 100 years old, that the two walls on the ground floor of the house, that were the base had collapsed, the construction was originally made in mud and the Municipal Corporation had issued notices to the petitioner as well as the respondent to get the dilapidated portion repaired. After making the aforesaid observations the courts recorded that the house needed immediate demolition and reconstruction in the circumstances of the case. The findings recorded by both the courts on the said issue do not call for interference. Merely because there is an admission in the cross-examination of the

respondent that the petitioner had sought to repair one of the walls of the building, it cannot be said that the house was not dilapidated and did not need repairs.

Since the judgments of the trial and the first appellate court are just and proper, the writ petition is liable to be dismissed. The same is dismissed as such, with no order as to costs.

JUDGE

KHUNTE