

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

WRIT PETITION NO. 1887 OF 2022

Smt. Geetabai wd/o Dinanath
Bhati, Aged about 57 yrs, Occ.
Housewife, R/o Bajar Chowk,
Saoner, Tah. Saoner, Distt. Nagpur.

.... **PETITIONER**

// VERSUS //

Ashokchand s/o Lalbahadur
Upadhyay, Aged about 56 yrs., Occ.
Business, R/o Ward No.2, Saoner,
Tah. Saoner, Distt. Nagpur.

.... **RESPONDENT**

Shri Yogesh D. Shukla, Advocate for the petitioner.
Shri M.I. Mourya, Advocate for the respondent.

CORAM : ROHIT B. DEO, J.
DATED : 08.04.2022.

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petitions are heard finally.

2. The petitioner is the landlord who has instituted Regular Civil Suit 70 of 2003 against the respondent-tenant seeking decree of eviction and arrears of rent.

3. The tenant preferred an application for appointment of an

Engineer on the establishment of the Public Works Department (P.W.D.) as Court Commissioner.

4. The application (Exhibit 126) preferred by the tenant is allowed by the learned Trial Judge vide order dated 21.02.2022.

5. Perusal of the suit plaint reveals that in addition to *bona fide* need and arrears of rent, the landlord sought possession on the ground that the suit property is in dilapidated condition and the repairs or demolition would not be possible unless the tenant vacate the suit property. It is in the context of the relief claimed by the landlord on the ground that the suit property is dilapidated, that the Court Commissioner is appointed.

6. The landlord has filed on the record affidavit dated 07.04.2022, paragraph 2 of which, reads thus :

“2. That, the Original Plaintiff in the said suit for ejectment of the Respondent/tenant from the suit premises is on one of the ground of the suit premises is in dilapidated condition. That by this undertaking the Petitioner undertakes that she will leave the ground of dilapidated condition of tenanted premises and will not press such ground against the Respondent/tenant in the said suit bearing no.70/2013. Then this undertaking.”

7. In view of the said undertaking, the only issue, which will have to be adjudicated by the learned Trial Judge is the existence or otherwise of the *bona fide* need, and whether the tenant is in arrears of rent. Considering

the limited scope of the adjudication, in view of the undertaking of the landlord noted *supra*, it would not be necessary to appoint the P.W.D. Engineer as Court Commissioner. Accordingly, the order impugned is set aside.

8. However, it is clarified that the tenant is at liberty to pursue such remedies as are available, if the landlord has failed in the duty to repair the suit premises, or if otherwise, there is any cause of action in view of the condition of the suit property.

9. With the aforesaid observations, the petition is disposed of.

10. The learned Trial Judge is requested to expedite the suit.

(ROHIT B. DEO, J.)

Trupti